English Liberties:

Or, The

Free-Born SUBJECTS

Inheritance.

CONTAINING

I. *MAGNA CHARTA*, The *Petition of Right*, The *Habeas Corpus* Act; and divers other most *Useful Statutes*: With Large COMMENTS upon each of them

II. The Proceedings in *Appeals of Murther*; The Work and Power of *Parliaments*; The *Qualifications* necessary for such as should be chosen to that great Trust. Plain Directions for all Persons concerned in *Ecclesiastical Courts*; and how to prevent or take off the Writ *De Excommunicato Capiendo*. As also the Oath and Duty of Grand and Petty Juries.

III. All the Laws against *Conventicles* and *Protestant Dissenters* with *Notes*, and Directions both to *Constables* and others concern'd, thereupon; And an *Abstract* of all the Laws against *Papists*.

LONDON:

Printed by *G. Larkin*, for *John How* at the *Seven Stars* at the South-west Corner of the *Royal-Exchange* in *Cornhill*.

BRITISH MUSEUM

A TABLE OF

Some of the most Material Contents.

THe Nature and Happiness of our English Government, from page 1. to p. 5.

Magna Charta faithfully Recited p. 6 to p. 19.

A Comment upon Magna Charta p. 19. to p. 30.

'Tis but a Declaration of what the people had right to before, p. 19.

The occasion and means of obtaining Magna Charta, p. 20.

Ill Council perswade King Hen 3. to Revoke Magna Charta, and the sad end of that wicked Counsellour, p. 21.

Liberties what, p. 24.

Monopolies are against Magna Charta, p. 25.

The King cannot send any man out of England against his will, p. 25.

Peers what, p. 26.

Commitment, *The necessary circumstances where Legal*, p. 27.
Justice *its three properties*, p. 28.
Judges *are to obey no Commands from the King, though under the Great or Privy Seal (much less signified by any little whispering Courtier) against Law*, p. 28.
Protection *when unlawful*, p. 29.
The Statute of Confirmation of the Charter, p. 31.
A Solemn Curse *of the Clergy against the Breakers of the Charter*, p. 33.
Another Curse *to the same purpose*, p. 34.
The Statute de Tallagio non Concedendo, *That the King shall lay no Burthens on his people, but by their Consent in Parliament*, p. 36.
A Comment *thereupon*, p. 38. to p. 40.
There are Omissions and Errors *in the Common* Printed *Statute-Books*, p. 40.
The Stat. of 25. Edw. 3. *declaring what Offences shall be* Treason, p. 40.
A Comment thereupon, p. 43. to p. 50.
To Compass the Death of the King what, p. 44.
A Colateral Heir *to the Crown is not within this Statute*, p. 45.
Probably *Attaint, an Errour in the Statute-Book for* provably *Attaint*, p. 45.
Offences made Treason since this Statute, p. 50.

The Stat. 13. *Car.* 2. *cap.* 1. *for* safety of His Majesties Person, &c. p. 51.
Notes thereupon, p. 57. to 63.
There must be two *not only* Lawful, *but* Credible *Witnesses on this Statute,* p. 58. and 59.
Within what time *the Party must be question'd and Indicted,* p. 60.
The Sentence *or Judgment* in High Treason, *and the signification of each Branch thereof,* p. 61.
The King cannot allow a Lord, Convict of Felony, the favour of being Beheaded, p. 62.
Challenge *what, and to how many,* p. 62.
The Statute, 2. Edw. 3. cap. 2. *In what Cases only the King shall grant* Pardons, p. 63.
The Comment thereon, p. 64.
The nature, form and proceedings in Case of Appeals of Murder, &c. *Particularly opened to the meanest Capacity, from* p. 67. to p. 74.
Two Statutes, *That a Parliament shall be holden* once every year, p. 75.
The Comment. p. 75.
The Act of the 16th. Car. 2. *that holding of Parliaments, shall not be discontinued above* three *years at the most,* p. 76.
A notable Discourse of the Antiquity, use and power of PARLIAMENTS, *and the* Qualifications *of such Gentlemen as are fit*

to be Chosen the peoples Representatives, p. 77. to p. 110.
Parliament, *the signification of the word*, p. 78.
City what, and how it differs from a Burrough, p. 79.
Three Estates *what, the Bishops none of them*, p. 80.
The Parliament has Right to order the Succession to the Crown, and he forfeits all his Goods and Chattels that denies it, p. 82. and 84.
The particular Business *of Parliaments*, p. 83.
To punish ill Favourites and Corrupt Ministers of State, p. 85.
Examples *of great Offenders punisht, Committed, degraded, and sentenced by Parliament, and particularly some* Parsons *for Fragmatical Preaching*, p. 85. to 92.
Reflections on State-Divines, p. 93.
The Mischiefs of selling Voices *for Parliament-men, for Liquor*, p. 95.
Directions touching Choice *of Members in 10 Negative Descriptions, who are not fit to be Elected*, p. 98. to 106.
The Characters of such as deserve this great trust, in five particulars, p. 10.
The Stat. *of* 8. Hen. 6. cap. 7. *That only* Freeholders *should Chuse Knights of the Shire*, p. 107. 110.

The

The Petition of Right, 3. Car. 1. *And the Kings* Assent *thereunto* [*left out in the Statute-Book*]. p. 112.

The Habeas Corpus Act, 31 *Car.* 2. *cap.* 2. p. 117.

The Comment thereupon, p. 128.

An Act for the Benefit of Prisoners *for Debt, that they shall not be lodged with* Felons, *&c.* p. 131.

An Act for regulating the Privy Council, *and taking away the* Star-Chamber, 17. Car. 1. cap. 10. p. 135.

Some Notes thereupon, p. 144.

The Clause of the Act of 31. Car. 2. cap. 1. *No man shall be bound to* Quarter Souldiers, p. 145.

The Act touching the Writ de Excommunicato Capiendo, 5. Eliz. cap. 23. p. 146.

A Comment, with a discourse of Excommunication, *directions how to manage your* defence *in all Cases in the Bishops Courts, and how to prevent or take off the Writ* de Excomunicato Capiendo, p. 154 to p. 170.

Church-Wardens not bound to take any Oath *in the Bishops Courts to present,* p. 170.

A Discourse touching the Laws made or endeavoured to be Executed against Protestant Dissenters, p. 171.

The Acts 1. Eliz. cap. 2. *the* 23. Eliz. cap. 1. *The* 29 Eliz. cap. 6. 1 Jac. cap. 4. *and* 3 Jac. cap. 4. *were all made against* Papists *only*

only, and ought not to be Extended against Protestant Dissenters, p. 171. to p. 177.
Two new Holy days *made in the Church of* England, *since His Majesties Restauration,* p. 173.
The opinion of the House of Commons, *That Acts made against Popish Recusants ought not to be extended against Protestant Dissenters,* p. 178.
The Act of 35 Eliz. cap. 1. *Considered. 'Tis plain from thence, that the Acts made against Popish Recusants, ought not to affect* Sectaries. p. 180.
The said Act of 35 Eliz. *proved to be long since expired,* p. 181.
As also that of the 16th Car. cap 4. *Intituled, An* Act to prevent and suppress seditious Conventicle p. 182.
The Oxford *or* Five Mile *Act,* 17 Car. 2. p. 183.
Notes thereupon, p. 187.
The Act of the 22th. Car. 2. cap. 1. *To* prevent and suppress seditious Conventicles, p. 188.
Notes upon that Act, p. 197.
An Abstract of the several Laws in Force against Papery and Papists, p. 200. to p. 204.
A Discourse of Juries, and the Advantages English *men enjoy thereby.* p. 205.
What persons ought to be Jury men and how Qualified, p. 209.

Jurors

Jurors in Antient Law-books call'd Judges, p. 211.
Of the Duty of Grand Juries, 12.2.
Their Oath, p. 213.
That Juries are Judges of Law, in some respects, as well as Fact, p. 220. *to* p. 223.
That Juries are not fineable, or any way to be punished under pretence of going contrary to Evidence, or against the Judges Directions, p. 223.
The Conclusion. Bushels *Case reported by the Learned Sir* John Vaughan, *Licensed by the present Lord Chancellor, the Lord Chief Justice* North, *and all the Judges then in England.*

The

THE PROEM.

THE Conſtitution of our Engliſh Government (the beſt in the World) is no Arbitrary *Tyranny*, like the Turkiſh Grand Seignior's, or the French Kings, whoſe Wills (or rather *Luſts*) diſpoſe of the Lives and Fortunes of their unhappy Subjects; Nor an *Oligarchy*, where the great ones (like Fiſh in the Ocean) prey upon, and live by devouring the *leſſer* at their pleaſure: Nor yet a *Democracy* or popular State, much leſs an *Anarchy*, where all confuſedly are *hail fellows well met*. But a moſt excellently-mixt or *qualified Monarchy*, where the King is veſted with large *Prerogatives* ſufficient to ſupport *Majeſty*; and reſtrain'd only from Power of doing himſelf and his People *harm*, (which would be contrary to the very end of all Government, and is properly rather *weakneſs* than power) the *Nobility* adorn'd with Priviledges to be a *Screen* to Majeſty, and a refreſhing Shade to their

Inferiours, and the *Commonalty* too, ſo Guarded in their Perſons and Properties by the fence of Law, as renders them *Free-men*, not Slaves.

In *France* and other Nations the meer Will of the Prince *is Law*, his Word takes off any mans *Head*, impoſes *Taxes*, or ſeizes any mans *Eſtate*, when, how, and as often as he liſts; and if one be *Accuſed*, or but ſo much as ſuſpected of any Crime, he may either preſenly Execute him, or Baniſh, or Impriſon him at pleaſure; or if he will be ſo Gracious as to proceed by Form of their Laws, if any *two Villains* will but ſwear againſt the poor Party, his Life is gone. Nay, if there be *no Witneſſes*, yet he may be put to the *Rack*, the Tortures whereof make many an *Innocent* Perſon confeſs himſelf Guilty, and then with ſeeming *Juſtice* he is Executed; or if he prove *ſo ſtout* as in Torments to deny the Fact, yet he comes off with *Diſjoynted Bones*, and ſuch Weakneſs as renders his Life a Burthen to him ever after.

But in *England*, the Law is both the *Meaſure and the Bond* of every Subjects Duty and Allegiance, each man having a fixed Fundamental Right born with him, as to *Freedom of his Perſon*, and *Property in his Eſtate*, which he cannot be deprived of, but either by his conſent, or ſome Crime for which the Law has Impos'd ſuch a Penalty or Forfeiture. For all our Kings take a ſolemn Oath (1) At their Coronation, *to Obſerve and cauſe the Laws to be kept*, which was done by our preſent moſt Gracious Soveraign: (2) Likewiſe all our Judges take a Oath, wherein amongſt other points, they ſwear, (3) *To do equal Law and Right to all the King's Subjects, Rich and Poor, and not to delay any Perſon of Common Right for the Letters of the King*

(1) *See Book of Oaths*, p. 1. & 3.
(2) *Bakers Cron.* fol. 741.
(3) *Book of Oaths* p. 216.

or of any other Perſon, or for any other Cauſe; But if any ſuch Letters come to them, they ſhall proceed to do the Law, the ſame Lettters notwithſtanding: Therefore ſaith *Forteſcue* (who was firſt *Chief Juſtice*, and afterwards Lord *Chancellor* to King *Henry the* 6th.) in his Book *de Laudibus Legum Angliæ*, cap. 9. *Non poteſt Rex Angliæ*, &c. *The King of* England *cannot alter nor change the Laws of his Realm at his pleaſure; For why, he Governeth his People by Power not only Royal, but alſo Politick; If his Power over them were only Regal, then he might change the Laws of his Realm, and charge his Subjects with Tallage and other Burthens without their conſent, and ſuch is the Dominion that the Civil Laws purport, when they cry,* Quod principi placuit Legis habet Vigorum, *The Princes pleaſure has the force of a Law. But from this much differeth the power of a King, whoſe Government over his People is Politick; For he can neither change Laws without the conſent of his Subjects, nor yet charge them with Impoſitions againſt their Wills; Wherefore his People do frankly and freely enjoy and occupy their own Goods, being Ruled by ſuch Laws as they themſelves deſire.* Thus *Forteſcue*; with whom Accords *Bracton* a Reverend Judge and Law-Author in the Reign of King *Henry* the third, ſaying— *Rex in Regno ſuo ſuperiores habet Deum & Legem; The King in his Realm hath two Superiors, God and the Law*; for he is under the *Directive*, though not *Coercive* Power of the Law; and on the ſame Score Judge *Vaughan* ſpeaking of our *Fundamental Laws* which are Coeval with the Government, ſticks not to ſay, *The Laws of* England *were never the Dictates of any Conquerors Sword, or the Placita or good Will and pleaſure of any King of this Nation, or to ſpeak Impartially and Freely, the Reſults of any Parliament that ever ſate in this Land.* And the late cited *Forteſcue*, in his

13 *chap.* has a very apt ſimilitude to Illuſtrate and Demonſtrate this, *The Law*, (ſays he) *taketh its name*, a Ligando, *to bind, for thereby the Politick Body is knit and preſerv'd together, as the Natural Body by the Bones and Sinews, and Members, which retain every one their proper Functions; And as the Head of a Body Natural cannot change his Sinews, nor cannot deny or with-hold from his inferiour Members, their peculiar Powers and ſeveral nouriſhments of Blood and Spirits, no more can a King, which is the Head of a Body Politick, change the Laws of that Body, nor withdraw from his People their proper Subſtance, againſt their Wills and Conſents in that behalf.*

'Tis true, the Law it ſelf affirms, *The King can do no wrong*, which proceeds not only from a preſumption, that ſo Excellent a Perſon *will do none:* But alſo becauſe he Acts nothing but *by Miniſters*, which (from the loweſt to the higheſt) are anſwerable for their doings, ſo that it a King in Paſſion ſhould command *A.* to kill *B.* without proceſs of Law, *A.* may yet be proſecuted by Indictment, or upon *an Appeal*, (where no Royal Pardon is allowable) and muſt for the ſame be Executed, ſuch Command notwithſtanding.

This Original happy frame of Government is truly and properly call'd an *Engliſh mans Liberty*, a Priviledge not to exempt from the Law, but to be freed in Perſon and Eſtate, from Arbitrary Violence and *Oppreſſion*; A *greater Inheritance* (ſaith Judge *Cook*) *is deriv'd to every one of us from our Laws than from our Parents*; For without the former, what would the latter ſignifie? And this Birth-right of Engliſh-men, ſhines moſt conſpicuouſly in two things: 1. *Parliaments.* 2. *Juries.*

By the firſt the Subject has a ſhare by his choſen Repreſentatives in the *Legiſlative* (or Law-making) Power, for no new Laws bind the People

of

of *England*, but ſuch as are by common conſent agreed on in that great Council.

By the ſecond, He has a ſhare in the *Executive* part of the Law, no Cauſes being Tryed, nor any man Adjudged to loſe Life, Member or Eſtate, but upon the *Verdict* of his Peers (or Equals) his Neighbours, and of his own Condition: theſe two Grand *Pillars* of Engliſh Liberty, are the Fundamental Vital Priviledges, whereby we have been, and are preſerv'd more free and happy than any other People in the World, and (we truſt) ſhall ever continue ſo; For whoever ſhall deſign to Impair, Pervert, or Undermine either of theſe, do ſtrike at the very Coniſtitution of our Government, and ought to be Proſecuted and Puniſhed with the utmoſt Zeal and Rigour. To cut down the *Banks*, and let in the Sea, or to Poyſon all the *Springs and Rivers* in the Kingdom, could not be a greater Miſchief; for this would only affect the preſent Age, but the other will Ruine and Enſlave all our Poſterity.

But beſides theſe General *Paramount Priviledges* which the Engliſh are Eſtated in by the Original Conſtitution of their Government, there are others more particularly declared and expreſſed in divers *Acts of Parliament*, of which ſeveral of the moſt remarkable and uſefull are here preſented at large to the Reader, with ſome *Notes* thereupon, for his better underſtanding of the ſame.

MAGNA CHARTA, or the Great Charter made in the ninth Year of King *Henry* the Third, and confirmed by King *Edward* the Firſt, in the eight and twentieth Year of his Reign.

EDward, *By the Grace of God, King of* England, *Lord of* Ireland, *and Duke of* Guyan: *To all Arch-Biſhops, Biſhops,* &c. *We have ſeen the great Charter of the Lord* Henry, *ſometimes King of* England, *our Father, of the Liberties of* England, *in theſe Words.*

HEnry, *By the Grace of God, King of* England, *Lord of* Ireland, *Duke of* Normandy *and* Guyan, *and Earl of* Anjou; *To all Arch-Biſhops, Biſhops, Abbots, Priors, Earls, Barons, Sheriffs, Provoſts, Officers, and to all Bayliffs, and other our Faithful Subjects, which ſhall ſee this preſent Charter, Greeting. Know you, that We unto the Honour of Almighty God, and for the Salvation of the Souls of our Progenitors and Succeſſors, Kings of* England, *to the Advancement of Holy Church, and Amendment of our Realm, of our meer and free Will, have Given and Granted to all Arch-Biſhops, Biſhops, Abbots, Priors, Earls, Barons, and to all Free-men of this our Realm, theſe Liberties following, to be kept in our Kingdom of* England *for ever.*

CHAP. I.

A Confirmation of Liberties.

FIrſt, We have granted to God, and by this our preſent Charter have confirm'd for Us & our Heirs for ever; That the Church of *England* ſhall be free, and

and ſhall have all her whole Rights and Liberties inviolable. (2) We have granted alſo, and given to all the Free-men of our Realm, for Us and our Heirs for ever, theſe Liberties under-written, to have and to hold to them and their Heirs for ever.

CHAP. II.

The Relief of the Kings Tenant of full Age.

IF any of our Earls or Barons, or any other which Hold of Us in Chief by Knights Service, dye, and at the time of his Death, his Heir be of full Age, and oweth to us Relief, he ſhall have his Inheritance by the old Relief, that is to ſay, the Heir or Heirs of an Earl, for a whole Earldom, by one hundred pound: the Heir or Heirs of a Baron for a whole Barony, by one hundred marks: the Heir or Heirs of a Knight, for one whole Knights Fee, one hundred ſhillings at the moſt. And he that hath leſs ſhall give leſs, according to the old Cuſtom of the Fees.

CHAP. III.

The Wardſhip of an Heir within Age; The Heir a Knight.

BUt if the Heir of any ſuch be within Age, his Lord ſhall not have the Ward of him, nor of his Land, before that he hath taken of him Homage. (2) And after that ſuch an Heir hath been in Ward (when he is come to full Age) that is to ſay, to the Age of one and twenty Years, he ſhall have his Inheritance without Relief, and without time; ſo that if ſuch an Heir being within Age be made Knight, yet nevertheleſs his Land ſhall remain in the keeping of his Lord unto the Term aforeſaid.

CHAP. IV.

No waſt ſhall be made by a Guardian in Wards Lands.

THE Keeper of the Land of ſuch an Heir being within Age, ſhall not take of the Lands of the Heir but reaſonable iſſues, reaſonable Cuſtoms,

and Reaſonable Services, and that without deſtruction, and waſte of his Men and his Goods. (2.) And if we commit the Cuſtody of any ſuch Land to the Sheriff, or to any other, which is anſwerable unto us for the Iſſues of the ſame Land, and he make deſtruction or waſte of thoſe things that he hath in Cuſtody, we will take of him amends and recompence therefore. (3.) And the Land ſhall be committed to two lawful and diſcreet men of that Fee, which ſhall anſwer unto Us for the Iſſues of the ſame Land, or unto him whom we will Aſſign. (4.) And if we give or ſell to any man the Cuſtody of any ſuch Land, and he therein do make deſtruction or waſte, he ſhall loſe the ſame Cuſtody. And it ſhall be Aſſigned to two lawful and diſcreet men of that Fee, which alſo in like manner ſhall be anſwerable to Us, as afore is ſaid.

CHAP. V.

Guardians ſhall maintain the Inheritance of their Wards: And of Biſhopricks.

THE Keeper, ſo long as he hath the Cuſtody of the Land of ſuch an Heir ſhall keep up the Houſes, Parks, Warrens, Ponds, Mills, and other things pertaining to the ſame Land, with the Iſſues of the ſaid Land: And he ſhall deliver to the Heir, when he cometh to his full Age, all his Land, ſtored with Ploughs and all other things, at the leaſt as he receiv'd it. All theſe things ſhall be obſerved in the Cuſtody of Arch-Biſhopricks, Biſhopricks, Abbeys, Priories, Churches and Dignities vacant, which appertain to Us; Except this, that ſuch Cuſtody ſhall not be ſold.

CHAP. VI.

Heirs ſhall be Married without Diſparagement.

HEirs ſhall be Married without Diſparagement,

CHAP.

CHAP. VII.

A Widow ſhall have her Marriage, Inheritance, and Quarentine. The Kings Widow.

A Widow after the Death of her Husband, Incontinent and without any difficulty, ſhall have her Marriage, and her Inheritance. (2.) And ſhall give nothing for her Dower, her Marriage, or her Inheritance, which her Husband and She held the day of the Death of her Husband. (3.) And She ſhall tarry in the chief Houſe of her Husband, by forty days after the Death of her Husband, within which days her Dower ſhall be Aſſigned her, (if it were not Aſſigned her before) or that the Houſe be a Caſtle. (4.) And if ſhe depart from the Caſtle, then a competent Houſe ſhall be forthwith provided for her, in the which She may honeſtly dwell, until her Dower be to her Aſſigned, as it is aforeſaid; And ſhe ſhall have in the mean time her reaſonable Eſtovers of the Common. (5.) And for her Dower ſhall be Aſſigned unto her the third part of all the Lands of her Husband, which were his during Coverture, except She were endowed of leſs at the Church door. (6.) No Widow ſhall be diſtrained to Marry her ſelf: Nevertheleſs She ſhall find Surety, that She ſhall not Marry without our Licence and Aſſent (if She hold of Us) nor without the Aſſent of the Lord, if She hold of another.

CHAP. VIII.

How Sureties ſhall be charged to the King.

WE or our Bailiffs, ſhall not ſeize any Land or Rents for any Debt, as long as the preſent Goods and Chattels of the Debtor do ſuffice to pay the Debt, and the Debtor himſelf be ready to ſatisfie therefore. (2.) Neither ſhall the Pledges of the Debtor be diſtrained, as long as the principal Debtor is ſufficient for the payment of the Debt. (3.) And if the principal Debtor fail in the payment of the Debt, having nothing wherewith to

Pay, or will not Pay where he is able, the pledges ſhall anſwer for the debt. (4) And if they will, they ſhall have the Lands and Rents of the Debtor until they be ſatisfied of that which they before payed for him, except that the Debtor can ſhew himſelf to be acquitted againſt the ſaid Sureties.

CHAP. IX.

The Liberties of London, *and other Cities and Towns confirmed.*

THe City of *London* ſhall have all the old Liberties and Cuſtoms which it hath been uſed to have. Moreover, we Will and Grant, that all other Cities and Borroughs, Towns, and the Barons of the five Ports, and all other Ports, ſhall have all their Liberties and free Cuſtoms.

CHAP. X.

None ſhall diſtrain for more Service than is due.

NO man ſhall be diſtrained to do more Service for a Knights Fee, nor for any Freeholder, than therefore is due.

CHAP. XI.

Common-Pleas, ſhall not follow the Kings Court.

COmmon-Pleas ſhall not follow our Court, but ſhall be holden in ſome place certain.

CHAP. XII.

Where, and before whom Aſſizes ſhall be taken. Adjournment for Difficulty.

ASſizes of *Novel Diſſeiſin* and of *Mortdanceſter*, ſhall not be taken but in the Shires, and after this manner: if we be out of this Realm, our Chief Juſticers ſhall ſend our Juſticers through every County once in the year; Which, with the Knights of the Shire, ſhall take the ſaid Aſſizes in thoſe Counties. (2) And thoſe things that at the coming of our aforeſaid Juſticers, being ſent to take thoſe Aſſizes in the Counties, cannot be determined, ſhall be ended by them in ſome other place in their Circuit. (3) And thoſe things which for difficulty

iculty of ſome Articles cannot be determined by hem, ſhall be referred to our Juſticers of the Bench, nd there ſhall be ended.

CHAP. XIII.

Aſſizes of Darrein Preſentment.

A Sſizes of Darrein Preſentment, ſhall be always taken before our Juſticers of the Bench, and there ſhall be determined.

CHAP. XIV.

How men of all ſorts ſhall be amerced, and by whom.

A Free-man ſhall not be amerced for a ſmall fault, but after the manner of the fault. And for a great fault after the greatneſs thereof, ſaving to him his contenement. *(2.)* And a Merchant likewiſe, ſaving to him his Merchandize. *(3.)* And any others Villain than ours ſhall be likewiſe amerced, ſaving his Wainage, if he fall into our mercy. *(4.)* And none of the ſaid amerciaments ſhall be Aſſeſſed, but by the Oath of honeſt and lawful men of the Vicinage. *(5.)* Earls and Barons, ſhall not be amerced, but by their Peers, and after the manner of their offence. *(6.)* No man of the Church ſhall be amerced after the quantity of his Spiritual Benefice, but after his Lay-tenement, and after the quantity of his offence.

CHAP. XV.

Making of Bridges and Banks.

NO Town nor Freeman ſhall be diſtrained to make Bridges nor Banks, but ſuch as of old time, and of right have been accuſtomed to make them in the time of King *Henry* our Grandfather.

CHAP. XVI.

Defending of Banks.

NO Banks ſhall be defended from henceforth, but ſuch as were in defence in the time of King *Henry* our Grandfather, by the ſame places, and the ſame bounds as they were wont to be in his time.

CHAP.

CHAP. XVII.

Holding Pleas of the Crown.

NO Sheriff, Conſtable, Eſcheator, Coroner, nor any other our Bayliffs, ſhall hold Pleas of our Crown.

CHAP. XVIII.

The Kings Debtor dying, the King ſhall be firſt paid.

IF any that holdeth of Us Lay-fee do dye, and our Sheriff or Bayliff do ſhew our Letters Patents of our Summons for Debt, which the Dead man did owe to us: It ſhall be lawful to our Sheriff or Bayliff, to Attach and Inroll all the Goods and Chattels of the Dead, being found in the ſaid Fee, to the value of the ſame Debt, by the ſight and teſtimony of lawful men; So that nothing thereof be taken away, until we be clearly paid off the Debt. (2.) And the reſidue ſhall remain to the Executors, to perform the Teſtament of the Dead. (3.) And if nothing be owing to Us, all the Chattels ſhall goe to the uſe of the Dead (ſaving to his Wife and Children the Reaſonable parts.)

CHAP. XIX.

Purveyance for a Caſtle.

NO Conſtable, nor his Bayliff ſhall take Corn or other Chattels of any man, if the man be not of the Town where the Caſtle is, but he ſhall forthwith pay for the ſame, unleſs that the Will of the Seller was to reſpite the payment. (2.) And if he be of the ſame Town, the price ſhall be paid unto him within forty days.

CHAP. XX.

Doing of Caſtle Ward.

NO Conſtable ſhall diſtrain any Knight for to give money for keeping of his Caſtle, if he himſelf will do it in his proper perſon, or cauſe it to be done by another ſufficient man, if he may not do it himſelf for a reaſonable cauſe. (2.) And if we do lead or ſend him in an Army, he ſhal

be

be free from Caſtle-ward for the time that he ſhall be with Us in Fee in our Hoſt, for the which he hath done Service in our Wars.

CHAP. XXI.

Taking of Horſes, Carts, and Woods.

NO Sheriff nor Bayliff of ours, nor any other, ſhall take the Horſes or Carts of any man to make Carriage, except he pay the old price limited, that is to ſay, for Carriage with two Horſe, 10 *d.* a day, for three Horſe 14 *d.* a day. (2.) No demeſne Cart of any ſpiritual Perſon or Knight, or any Lord, ſhall be taken by our Bayliffs. (3.) Nor we, nor our Bailiffs, nor any other ſhall take any mans Wood for our Caſtles, or other our Neceſſaries to be done, but by the Licenſe of him whoſe the Wood is.

CHAP. XXII.

How long Felons Lands ſhall be holden by the King.

WE will not hold the Lands of them that be be Convict of Felony but one Year and one day, and then thoſe Lands ſhall be delivered to the Lords of the Fee.

CHAP. XXIII.

In what place Wears ſhall be put down.

ALL Wears from henceforth ſhall be utterly put down by *Thames* and *Medway*, and through all *England*, but only by the Sea-Coſts.

CHAP. XXIV.

In what Caſe a Præcipe in Capite, *is not grantable.*

THE Writ that is called *Præcipe in Capite*, ſhall be from henceforth granted to no Perſon of any Free-hold, whereby any Free-man may loſe his Court.

CHAP. XXV.

There ſhall be but one Meaſure throughout the Realm.

ONE Meaſure of Wine ſhall be through our Realm, and one Meaſure of Ale, and Meaſure of Corn, that is to ſay, the Quarter of *London*. (2.) And

(2.) And one breadth of died Cloath, Ruſſets, and Haberjects, that is to ſay, two yards within the Liſts. (3.) And it ſhall be of Weights as it is of Meaſures.

CHAP. XXVI.

Inquiſition of Life and Member.

NOthing from henceforth ſhall be given for a Writ of Inquiſition, nor taken of him that prayeth Inquiſition of Life or of Member, but it ſhall be granted freely, and not denyed.

CHAP. XXVII.

Tenure of the King, in Socage, and of another by Knights Service. Petit Serjeantry.

IF any do hold of Us by Fee-farm, or by Socage, or Burgage, & he holdeth Lands of another by Knights Service, we will not have the Cuſtody of his Heir, nor of his Land, which is holden of the Fee of another, by reaſon of that Fee-farm, Socage, or Burgage. (2.) Neither will we have the Cuſtody of ſuch Fee-farm, or Socage, or Burgage, except Knights Service be due unto Us out of the ſame Fee-farm. (4.) We will not have the Cuſtody of the Heir, or of any Land, by occaſion of any Petit Serjeantry that any man holdeth of Us by Service, to pay a Knife, an Arrow, or the like.

CHAP. XXVIII.

Wager of Law ſhall not be without Witneſs.

NO Bayliff from henceforth, ſhall put any man to his open Law, nor to an Oath, upon his own bare ſaying, without faithfull Witneſſes brought in for the ſame.

CHAP. XXIX

None ſhall be Condemned without Triall. Juſtice ſhall not be ſold or deferred.

NO Freeman ſhall be taken or Impriſoned, or be diſſeiſed of his Freehold, or Liberties, or free Cuſtoms, or be outlawed or Exiled, or any otherwiſe deſtroyed, nor we will not paſs upon him,

nor

nor condemn him, but by lawful Judgment of his Peers, or by the Law of the Land. (2) We will ſell to no man, we will not deny or deſer to any man either Juſtice or Right.

CHAP. XXX.

Merchants, Strangers, coming into this Realm, ſhall be well uſed.

ALL Merchants (if they were not openly prohibited before) ſhall have their ſafe and ſure Conduct to Depart out of *England*, to come into *England*, to tarry in and go through *England*, as well by Land as by Sea, to buy and ſell without any manner of evill tools, by the old and rightful Cuſtoms, except in time of War. (2) And if they be of a Land making War againſt Us, and be found in our Realm at the beginning of the Wars, they ſhall be Attached without harm of Body and Goods, untill it be known unto us or our Chief Juſtice, how our Merchants be intreated there in the Land making War againſt Us. (3) And if our Merchants be well intreated there, theirs ſhall be likewiſe with Us.

CHAP. XXXI.

Tenure of a Barony, coming into the Kings Hand by Eſchete.

IF any man hold of any Eſchete, as of the Honour of *Wallingford*, *Nottingham*, *Boloin*, or of any other Eſchetes which be in our hand, and are Baronies, and dye, his Heir ſhall give none other Relief, nor do none other Service to Us than he ſhould to the Baron, if it were in the Barons hand. (2.) And we in the ſame wiſe ſhould hold it as the Baron held it, neither ſhall we have by occaſion of any Baron or Eſchete, any Eſchete or Keeping of any of our men, unleſs he that held the Barony or Eſchete, otherwiſe held of us in Chief.

CHAP. XXXII.

Lands ſhall not be aliened to the prejudice of the Lords Service.

NO Freeman, from henceforth ſhall give or ſell any more of his Land, but ſo that of the Reſidue of the Lands, the Lord of the Fee may have the Services due to him, which belongeth to the Fee.

CHAP. XXXIII.

Patrons of Abbies, ſhall have the Cuſtody of them in the time of Vacation.

ALL Patrons of Abbies, which have the Kings Charter of *England*, of Advowſon, or have old tenure or poſſeſſion in the ſame, ſhall have the Cuſtody of them when they fall void, as it hath been accuſtomed, and as it is afore declared.

CHAP. XXXIV.

In what only Caſe a Woman ſhall have an Appeal of Death.

NO man ſhall be taken or Impriſoned upon the Appeal of a Woman, for the Death of any other than of her Husband.

CHAP. XXXV.

At what time ſhall be kept a Countrey Court, Sheriffs turn, and a Leet.

NO Countrey from henceforth ſhall be holden, but from month to month; and where greater time hath been uſed, there ſhall be greater. (2.) Nor any Sheriff or his Bayliff ſhall keep his Turn in the Hundred, but twice in the Year: and no where but in due place and accuſtomed, that is to ſay, once after *Eaſter*, and again after the Feaſt of Saint *Michael*. (3.) And the view of *Frank-pledge* ſhall be likewiſe at the Feaſt of Saint *Michael* without occaſion. So that every man have his Liberties which he had, or uſed to have in the time of King *Henry* our Grandfather, or which he hath purchaſed ſince. (4.) The view of *Frank-pledge* ſhall be ſo done, that our peace may be kept. (5.) And that

that the Tything be wholly kept as it hath been acuſtomed. (6.) And that the Sheriff ſeek no occaſions, and that he be content with ſo much as the Sheriff was wont to have for his view-making in the time of King *Henry* our Grandfather.

CHAP. XXXVI.

No Land ſhall be given in Mortmain.

IT ſhall not be lawful from henceforth to any one to give his Lands to any Religious Houſe, and to take the ſame Land again to hold of the ſame Houſe. Nor ſhall it be lawful to any Houſe of Religion to take the Lands of any, and to Leaſe the ſame to him of whom he received it: If any from henceforth give his Lands to any Religious Houſe, and thereupon be Convict, the Gift ſhall be utterly void, and the Land ſhall Accrue to the Lord of the Fee.

CHAP. XXXVII.

A Subſidy in reſpect of this Charter, and the Charter of the Forreſt, granted to the King.

ESCuage from henceforth ſhall be taken, like as it was wont to be in the time of King *Henry* our Grandfather, reſerving to all *Archbiſhops*, *Biſhops*, *Abbots*, *Priors*, *Templers*, *Hoſpitallers*, *Earls*, *Barons*, and all perſons as well Spiritual as Temporal, all their free Liberties and free Cuſtoms which they have had in time paſſed; (2.) And all theſe Cuſtoms and Liberties aforeſaid, which we have granted to be holden within this our Realm, as much as appertaineth to us and our Heirs, we ſhall obſerve. (3.) And all men of this our Realm, as well Spiritual as Temporal (as much as in them is) ſhall obſerve the ſame againſt all perſons in likewiſe. (4.) And for this our Gift and Grant of theſe Liberties, and of other contained in our Charter of liberties of our Foreſt, the *Archbiſhops*, *Biſhops*, *Abbots*, *Priors*, *Earls*, *Barons*, *Knights*, *Freeholders*, and other our Subjects, have given unto us the fifteenth part

of

of all their movables. (5) And we have granted unto them on the other part, that neither we nor our Heirs ſhall procure or do any thing, whereby the Liberties in this Charter contained, ſhall be Infringed or Broken. (6) And if any thing be procured, by any perſon, contrary to the premiſſes, it ſhall be had of no force nor effect. Theſe being Witneſſes, Lord *B.* Arch-biſhop of *Canterbury*, E. Biſhop of *London*, &c.

We, Ratifying and approving theſe Gifts and Grants aforeſaid, confirm and make ſtrong all the ſame for Us and our Heirs, perpetually; And by the Tenour of theſe preſents, do renew the ſame, Wilſing and granting for Us and our Heirs, that this Charter, and all and ſingular his Articles for ever ſhall be ſtedfaſtly, firmly and Inviolably obſerved. And if any Article in the ſame Charter contained, yet hitherto peradventure hath not been kept, We will, and by Authority Royal Command from henceforth firmly they be obſerved. In Witneſs whereof we have cauſed theſe our Letters Patents to be made. *T. Edward* our Son at *Weſtminſter*, the twenty eighth day of *March*, in the twenty eighth year of our Reign.

Notes

Notes on *Magna Charta.*

THis Excellent Law holds the firſt place in our Statute Books, for though there were no doubt many Acts of Parliament long before this, yet they are not now Extant: 'tis called *Magna Charta*, or the Great Charter, not in Reſpect of its Bulk, but in Regard of the great Importance and weight of the matters therein contained; it is alſo ſtyled *Charta Libertatum Regni*, the Charter of the Liberties of the Kingdom, and upon great reaſon (ſaith *Cook* in his Proem) is it ſo called from the effect, *Quia liberos facit*, becauſe it makes and preſerves the people free.

Though it run in the ſtyle of the King *as a Charter*, yet (as my Lord *Cook* well obſerves on the 38 Chapter) it appears to have paſſed in Parliament; for there was then a fifteenth granted to the King, by the Biſhops, Earls, Barons, Free-tenants and people, which could not be but in Parliament, nor was it unuſual in thoſe times to have *Acts* of Parliament in a form of a Charter: as you may read in the Princes caſe, *Co. Rep. L.* 8.

Likewiſe though it be ſaid here, that the *King hath given and granted theſe Liberties*; yet they muſt not be underſtood as meer *Emanations* of Royal *Favour*, or new bounties granted, which the people could not juſtly challenge, or had not a *Right* unto before; For the Lord *Cook* at divers places aſſerts, and all Lawyers know, that this Charter is for the moſt part only *Declaratory* of the principal grounds of the Fundamental Laws and Liberties of *England*; no new Freedom is hereby granted, but a Reſtitution of ſuch as lawfully they had before, and to free them of what had been uſurped and encroached upon them by any power whatſoever; and therefore you may

may ſee this Charter often mentions *Sua Jura*, their Rights, and *Liberates ſuas*, their Liberties, which ſhews they had them before, and that the ſame now were Confirmed.

As to the occaſion of this Charter, it muſt be noted, that our Anceſtors the *Saxons* had with a moſt equal poize and temperament, very wiſely contriv'd their Government, and made excellent proviſions for their Liberties, and to preſerve the People from oppreſſion, and when *William* the *Norman* made himſelf Maſter of the Land, though he be commonly called the *Conquerour*, yet in truth he was not ſo, and I have known ſeveral Judges that would Reprehend any Gentleman at the Bar that caſually gave him that Title; For though he killed *Harold* the Uſurper, and Routed his Army, yet he pretended a right to the Kingdom, and was admitted by Compact, and did take an Oath to obſerve the *Laws and Cuſtoms*.

But the truth is, he did *not perform* that Oath ſo as he ought to have done; and his Succeſſors *William Rufus*, King *Stephen*, *Henry* the Firſt, and *Richard* likewiſe, made frequent *Encroachments* upon the Liberties of their People, but eſpecially King *John* made uſe of ſo many Illegal Devices to drain them of *Money*, that wearied with intollerable oppreſſions they reſolved to oblige the King to grant them their Liberties, and to promiſe the ſame ſhould be obſerved, which King *John* did in *Running-mead* between *Stains* and *Windſor*, by two Charters, one called *Charta Libertatum*, *The Charter of Liberties* (the Form of which you may read in *Math. Paris*, *Fol.* 246. and is in effect the ſame with this here recited) the other the *Charter of the Forreſt*, Copies of which he ſent into every County, and commanded the Sheriffs, *&c.* to ſee them fulfilled.

But by ill Council he quickly after began to violate them as much as ever, whereupon Diſturbances and great

great miſeries aroſe both to himſelf and the Realm.

The Son and Succeſſor of this King *John* was *Henry* the Third, who in the 19*th* Year of his Reign, Renewed and Confirmed the ſaid Charters, but within two Years after *Cancelled* them by the pernicious advice of his Favourites, and particularly *Hubert de Burgh* whom he had made Lord Chief Juſtice; one that in former times had been a great Lover of his Countrey, and a well deſerving Patriot, as well as learned in the Laws, but now to make *this* a ſtep to his *Ambition* (which ever Rideth without Reins) perſwaded and humored the King that he might avoid the Charters of his Father King *John* by *Dureſſe*, and his own Great Charter, and *Charta de Foreſta* alſo, for that he was *within Age* when he granted the ſame; whereupon the King in the eleventh Year of his Reign, being then of full Age, got one of the great Charters, and of the Forreſt, into his Hands, and by the Council principally of this *Hubert* his Chief Juſtice, at a Council holden at *Oxford*, unjuſtly *Cancelled both the ſaid Charters*, (notwithſtanding the ſaid *Hubert de Burgh* was the primier Witneſs of all the Temporal Lords to both the ſaid Charters) whereupon he became in high Favour with the King, inſomuch that he was ſoon after (*viz.* the 10*th* of *December* in the 13*th* Year of that King) Created (to the higheſt Dignity that in thoſe times a Subject had) to be an Earl, *viz.* of *Kent*. But ſoon after (for Flatterers and Humoriſts have no ſure Foundation) he fell into the Kings heavy Indignation, and after many fearful and *miſerable Troubles*, he was juſtly, and according to Law Sentenced by his Peers in an open Parliament, and juſtly *Degraded* of that Dignity which he unjuſtly had obtained by his Counſel for Cancelling of *Magna Charta*, and *Charta de Foreſta*.

In the 9th. *Chap.* of this great Charter, all the Ancient Liberties and Cuſtoms of *London*, are Confirmed

firmed and preſerved, which is likewiſe done by divers other Statutes, as 14 *Edw.* 3. *Chap.* 2. &c.

The 29 *Chapt.* NO FREE-MAN SHALL BE TAKEN, *&c.* deſerves to be written in Letters of Gold, and I have often wondred the words thereof are not Inſcribed in Capitals on all our Courts of Judicature, *Town-Halls*, and moſt publick Edifices; they are the Elixir of our *Engliſh* Freedoms, the Storehouſe of all our Liberties. And becauſe my Lord *Cook* in the ſecond part of his Inſtitutes, has many excellent Obſervations, I ſhall here Recite his very words. This Chapter containeth nine ſeverall Branches:

1. *That no man be taken or Impriſoned*, but *per Legem terræ*, that is, by the Common Law, Statute-Law, or Cuſtom of *England*: For theſe words, *per Legem terræ*, being towards the end of this Chapter, do Refer to all the precedent matters in this Chapter; and this hath the firſt place, becauſe the *Liberty of a mans perſon* is more precious to him than all the reſt that follow, and therefore it is great Reaſon that he ſhould by Law be Relieved therein, if he be wronged, as hereafter ſhall be ſhewed.

2. *No man ſhall be diſſeiſed*, that is, put out of Seiſin, or diſpoſſeſſed of his Free-hold, that is, Lands or Livelyhood, or of his Liberties or free-Cuſtoms, that is, of ſuch Franchiſes and Freedoms, and free Cuſtoms as belong to him, by his Free Birth-Right, unleſs it be by the *lawful Judgment*, that is, *Verdict* of his Equals, (that is, of men of his own Condition) or by the *Law of the Land*, that is (to ſpeak it once forr all) by the due Courſe and proceſs of Law.

3. *No man ſhall be outlawed*, made an *Exlex*, put out of the Law, that is, deprived of the Benefit of the Law, unleſs he be outlawed according to the Law of the Land.

4. *No Man ſhall be Exiled* or Baniſhed out of his Countrey, that is, *Nemo perdet patriam*, no man ſhall

hall *loſe his Countrey*, unleſs he be Exiled according o the Law of the *Land*.

5. *No man ſhall in any ſort be deſtroyed*, (*Deſtruere id eſt quod prius ſtructum & factum fuit penitus Evertere & Diruere*,) unleſs it be by the Verdict of his Equals, or according to the Law of the Land.

6. No man ſhall be Condemned at the Kings Suit, either before the King in his Bench, where the Pleas are *Coram Rege* (and ſo are the words, *Nec ſuper eum ibimus*, to be underſtood;) nor before any other Commiſſioner or Judge whatſoever, and ſo are the words, *Nec ſuper eum mittimus*, to be underſtood, but by the Judgement of his Peers, that is, Equals, or according to the Law of the Land.

7. We ſhall ſell to no man Juſtice or Right.

8. We ſhall deny to no man Juſtice or Right.

9. We ſhall defer to no man Juſtice or Right.

Each of theſe we ſhall briefly explain.

1. No man *ſhall be taken* (that is) Reſtrained of Liberty by Petition or Suggeſtion to the *King* or his *Council*, unleſs it be by Indictment or preſentment of good and lawfull men, where ſuch deeds be done. This Branch and divers other parts of this Act have been notably explained and Conſtrued by divers Acts of Parliament, ſeveral of which you will find Recited hereafter in this book.

2. *No man ſhall be Diſſeiſed*, &c. Hereby is intended that Lands, Tenements, Goods and Chattels, ſhall not be ſeiſed into the Kings Hands contrary to this great Charter, and the Law of the Land, nor any man ſhall be diſſeiſed of his Lands or Tenements, or diſpoſſeſſed of his Goods or Chattels contraty to the Law of the Land.

A Cuſtom was alleadged in the Town of *C.* that if the Tenant ceaſe by two years, that the Lord ſhould enter into the Freehold of the Tenant, and hold the ſame untill he were ſatisfied of the Arrearages: it was adjudged a Cuſtom againſt the Law of the

the *Land*, to enter into a Mans Freehold in that caſe, without Action or Anſwer.

King *Henry* 6. Granted to the Corporation of *Diers* within *London*, power to ſearch, *&c.* And if they found any Cloath died with *Log-Wood*, that the Cloath ſhould be Forfeit: And it was adjuged, that this Charter concerning the Forfeiture was againſt the Law of the Land, and this Statute; For no Forfeiture can grow by Letters Patents.

No Man ought to be put from his Livelihood without Anſwer.

3. *No Man Outlawed*] That is, barred to have the benefit of the Law. And note, to this word *Outlawed*, theſe words, *Unleſs by the Law of the Land*, do Referr. [*Of his Liberties*] This word hath three Significations:

1. As it hath been ſaid, it ſignifieth the *Laws* of the Realm, in which reſpect this Charter is called *Charta Libertatum*, as aforeſaid.

2. It ſignifieth the *Freedom the Subjects* of *England* have: for example, the Company of *Merchant-Taylors* of *England*, having power by their Charter to make Ordinances, made an Ordinance that every Brother of the ſame Society ſhould put the one half of his Cloaths to be dreſſed by ſome Cloath-Workers Free of the ſame Company, upon pain to Forfeit 10 *s. &c.* And it was adjuged that this Ordinance was againſt Law, becauſe it was againſt the Liberty of the Subject, for every Subject hath freedom to put his Cloaths to be dreſſed by whom he will, *& ſic de ſimilibus.* And ſo it is, if ſuch or the like grant had been made by his Letters Patents.

3. *Liberties* ſignifie the *Franchiſes and Priviledges* which the Subjects have of the gift of the King, as the Goods and Chattels of *Felons*, *Out-laws* and the like; or which the Subject claims by Preſcription, as *wreck*, *waiſs*, *ſtraie*, and the like.

S

So likewiſe and for the ſame reaſon, if a Grant be made to any Man to have the Sole making of *Cards*, or the Sole dealing with any other Trade, that Grant is againſt the Liberty and Freedom of the Subject, that before did or lawfully might have uſed that Trade, and conſequently againſt this great Charter.

Generally *all Monopolies* are againſt this great Charter, becauſe they are againſt the Liberty and Freedom of the Subject, and againſt the Law of the Land.

4. *No Man Exiled*, that is Baniſht, or forced to depart or ſtay out of *England* without his Conſent. By the *Law* of the *Land*, no Man can be *Exiled* or Baniſhed out of his Native Country, but either by *Authority of Parliament*, or in Caſe of Abjuration for Felony by the Common Law; and ſo when our Books, or any Record, ſpeak of *Exile*, or Baniſhment, other than in caſe of Abjuration, it is to be intended to be done by *Authority of Parliament*, as *Belknap* and other Judges, *&c.* Baniſhed into *Ireland*, in the Reign of *Rich.* the Second.

This is a Beneficial Law, and is Conſtrued benignly; And therefore the King cannot ſend any Subject of *England* againſt his will to ſerve him out of this Realm, for that ſhould be an Exile, and he ſhould *perdere Patriam*: No, he cannot be ſent againſt his will into *Ireland*, to ſerve the King or his Deputy there, becauſe it is out of the Realm of *England*: For if the King might ſend him out of this Realm to any place, then under pretence of Service, as Ambaſſador or the like, he might ſend him into the furtheſt part of the World, which being an Exile, is prohibited by this Act.

5. *No Man deſtroyed*——That is, forejudged of Life or Limb, or put to Torture or Death, every oppreſſion againſt Law by colour of any uſurped Authority is a kind of deſtruction. And the words *Ali-*

quo modo (any otherwiſe) are added to this Verb *deſtroyed*, and to no other Verb in this Chapter, and therefore all things by any manner of means tending to deſtruction are prohibited; as if a Man be accuſed or Indicted of Treaſon or Felony, his Lands or Goods cannot be granted to any, no not ſo much as by promiſe, nor any of his Lands or Goods ſeized into the Kings hands before he is Attainted; For when a Subject obtaineth a promiſe of the forfeiture, many times undue means and more violent proſecution is uſed for private Lucre, tending to deſtruction, than the quiet and juſt proceeding of the Law would permit, and the party ought to live of his own until Attainder.

6. *By Lawful Judgment of his Peers,*] That is by his *Equals*, Men of his own Rank and Condition. The general diviſion of Perſons by the Law of *England*, is, either *one that is Noble*, and in reſpect of his Nobility of the Lords Houſe of Parliament, or *one of the Commons*, and in reſpect thereof, of the Houſe of Commons in Parliament. And as there be divers degrees of Nobility, as Dukes, Marqueſſes, Earls, Viſcounts, and Barons, and yet all of them are comprehended under this word *Peers*, and are Peers of the Realm; ſo of the Commons, there be Knights, Eſquires, Gentlemen, Citizens, and Yeomen, and yet all of them of the Commons of the Realm. And as every of the Nobles is one a Peer to another, though he be of a ſeveral degree, ſo it is of the Commons; and as it hath been ſaid of Men ſo doth it hold of Noble Women, either by Birth or Marriage.

And foraſmuch, as this Judgment by Peers is called *Lawful*, it ſhews the Antiquity of this manner of Trial: It was, the ancient, accuſtomed, Legal Courſe long before this Charter.

Or by the Law of the Land.] That is, by due proceſs of Law, for ſo the words are expreſly expound-

ed by the Stat. of 37 *Edw.* 3. *chap.* 8. And these words are specially to be referred to those foregoing, to whom they relate. As none shall be condemn'd without a lawful Trial by his Peers, so none shall be taken, Imprison'd, or put out of his Free-hold, without due process of the Law, that is by the Indictment or Presentment of good and lawful Men of the place, in due manner, or by Writ Original of the Common-Law.

Now, seeing that no Man can be Taken, Arrested, Attached, or Imprisoned, but by due process of Law, and according to the Law of the Land, these conclusions hereupon do follow.

1. That the Person or Persons which commit any, must have lawful Authority.

2. It is necessary that the Warrant or Mittimus be lawful, and that must be in Writing under his Hand and Seal.

3. The Cause must be contained in the Warrant, as for Treason, Felony, *&c.* Suspicion of Treason, or Felony, or the like particular Crime; For if it do not thus specifie the Cause, if the Prisoner bring his *Habeas Corpus*, he must be discharged, because no Crime appears on the Return; Nor is it in such Case any offence at all, if the Prisoner make his escape; whereas if the Mittimus contain the Cause, the escape would respectively be Treason or Felony, though in Truth he were not Guilty of the first offence. And this mentioning the Cause, is agreeable to Scripture, *Acts* 5.

4. The Warrant or Mittimus containing a lawful Cause, ought to have a lawful conclusion, *&c.* And him safely to keep until he be delivered by Law, *&c.* and not until the party committing shall further Order.

If any Man by colour of any Authority, where he hath not any in that particular Case, shall presume to Arrest or Imprison any Man, or cause him

to be Arreſted or Impriſoned, this is againſt this Act, and it is moſt hateful, when it is done by Countenance of Juſtice. King *Edw.* the 6th. did Incorporate the Town of Saint *Albans*, and granted to them to make Ordinances, *&c.* They made a by-Law upon pain of Impriſonment, and it was adjudged to be againſt this Statute of *Magna Charta*; ſo it had been, if ſuch an Ordinance had been contained in the Patent it ſelf.

We will ſell to no Man, deny to no Man, &c. This is ſpoken in the Perſon of the King, who in Judgment of Law in all his Courts of Juſtice is preſent; And therefore every Subject of this Realm, for injury done to him, *in Bonis, Terris, vel Perſona*, in Perſon, Lands, or Goods, by any other Subject, *Eccleſiaſtical or Temporal*, whatever he be without exception, may take his Remedy by the courſe of the Law, and have Juſtice and Right for the Injury done him, *Freely* without ſale, *Fully* without any denial, and *Speedily* without delay; For Juſtice muſt have three Qualities, it muſt be *Libera*, Free, for nothing is more odious than Juſtice ſet to ſale; *Plena*, *Full*, for Juſtice ought not to limp, or be granted Piece-meal; and *Celeris*, ſpeedy: *Quia Dilatio eſt quædam negatio*, Delay is a kind of denial; And when all theſe meet, it is both Juſtice and Right.

We will not deny nor delay any Man, &c.) Theſe words have been excellently expounded by latter Acts of Parliament, that by no means common right or common law ſhould be diſturbed or delayed; no, though it be commanded under the *Great Seal, or Privy Seal, Order, Writ, Letters, Meſſage, or Commandment whatſoever, either from the King or any other*; and that the Juſtices ſhall proceed, as if no ſuch Writs, Letters, Order, Meſſage, or other Commandment were come to them: all our Judges ſwear to this; for 'tis part of their Oaths, ſo that if any ſhall be found wreſting the Law to ſerve a Court

Turn,

Turn, they are perjur'd as well as unjuſt. The Common-laws of the Realm ſhould by no means be *delayed*, for the Law is the ſureſt Sanctuary that a Man can take, and the ſtrongeſt Fortreſs to protect the weakeſt of all; *Lex eſt tutiſſima Caſſis*, the Law is a moſt ſafe Head-piece, and *ſub Clipeo legis nemo decipitur*, no man is deceived whilſt the Law is his Buckler; but the King may ſtay his own ſuit, as a *Capias pro fine*, for the King may Reſpit his Fine, and the like.

All Protections that are not Legal, which appear not in the Regiſter, nor warranted by our Books, are expreſly againſt this Branch, *nulli differemus*, we will not delay any Man: As a Protection under the Great Seal granted to any Man, directed to the Sheriffs, *&c.* and commanding them that they ſhall not Arreſt him during a certain time at any other Mans ſuit, which hath words in it, *Per Prerogativam noſtram quam nolumus eſſe Arguendam*; *By our Prerogative, which we will not have diſputed*; Yet ſuch Protections have been argued by the Judges, according to their Oath and Duty, and adjuged to be void. As *Mich.* 11 *H.* 7. *Rot.* 124. a Protection granted to *Holmes* a Vintner of *London*, his Factors, Servants and Deputies, *&c.* Reſolved to be againſt Law. *Paſch.* 7. *H.* 8. *Rot.* 66. ſuch a Protection diſallowed, and the Sheriff amerced for not executing the Writ, *Mich.* 13. and 14 *Eliz.* in *Hitchcocks* Caſe, and many other of latter time: And there is a notable Record of Ancient time in 22 *E.* 1. *John de Merſhals* Caſe; *Non pertinet ad vicecomitem de protectione Regis Judicare, imo ad Curiam.*

Juſtice or Right] We ſhall not ſell, deny or delay Juſtice and Right, neither the *End*, which is *Juſtice*; nor the *Mean* whereby we may attain to the End, and that is the *Law*: Right, is taken here for *Law*, in the ſame ſence that Juſtice often is ſo called. 1. Becauſe it is the *Right Line*, whereby Juſtice

to be Arreſted or Impriſoned, this is againſt this Act, and it is moſt hateful, when it is done by Countenance of Juſtice. King *Edw.* the 6th. did Incorporate the Town of Saint *Albans*, and granted to them to make Ordinances, *&c.* They made a by-Law upon pain of Impriſonment, and it was adjudged to be againſt this Statute of *Magna Charta*; ſo it had been, if ſuch an Ordinance had been contained in the Patent it ſelf.

We will ſell to no Man, deny to no Man, &c. This is ſpoken in the Perſon of the King, who in Judgment of Law in all his Courts of Juſtice is preſent; And therefore every Subject of this Realm, for injury done to him, *in Bonis, Terris, vel Perſona*, in Perſon, Lands, or Goods, by any other Subject, *Eccleſiaſtical or Temporal*, whatever he be without exception, may take his Remedy by the courſe of the Law, and have Juſtice and Right for the Injury done him, *Freely* without ſale, *Fully* without any denial, and *Speedily* without delay; For Juſtice muſt have three Qualities, it muſt be *Libera*, Free, for nothing is more odious than Juſtice ſet to ſale; *Plena*, *Full*, for Juſtice ought not to limp, or be granted Piece-meal; and *Celeris*, ſpeedy: *Quia Dilatio eſt quædam negatio*, Delay is a kind of denial; And when all theſe meet, it is both Juſtice and Right.

We will not deny nor delay any Man, &c.) Theſe words have been excellently expounded by latter Acts of Parliament, that by no means common right or common law ſhould be diſturbed or delayed; no, though it be commanded under the *Great Seal, or Privy Seal, Order, Writ, Letters, Meſſage, or Commandment whatſoever, either from the King or any other*; and that the Juſtices ſhall proceed, as if no ſuch Writs, Letters, Order, Meſſage, or other Commandment were come to them: all our Judges ſwear to this; for 'tis part of their Oaths, ſo that if any ſhall be found wreſting the Law to ſerve a Court Turn,

Turn, they are perjur'd as well as unjuſt. The Common-laws of the Realm ſhould by no means be *delayed*, for the Law is the ſureſt Sanctuary that a Man can take, and the ſtrongeſt Fortreſs to protect the weakeſt of all; *Lex eſt tutiſſima Caſſis*, the Law is a moſt ſafe Head-piece, and *ſub Clipeo legis nemo decipitur*, no man is deceived whilſt the Law is his Buckler; but the King may ſtay his own ſuit, as a *Capias pro fine*, for the King may Reſpit his Fine, and the like.

All Protections that are not Legal, which appear not in the Regiſter, nor warranted by our Books, are expreſly againſt this Branch, *nulli differemus*, we will not delay any Man: As a Protection under the Great Seal granted to any Man, directed to the Sheriffs, *&c.* and commanding them that they ſhall not Arreſt him during a certain time at any other Mans ſuit, which hath words in it, *Per Prerogativam noſtram quam nolumus eſſe Arguendam*; *By our Prerogative, which we will not have diſputed*; Yet ſuch Protections have been argued by the Judges, according to their Oath and Duty, and adjuged to be void. As *Mich.* 11 *H.* 7. *Rot.* 124. a Protection granted to *Holmes* a Vintner of *London*, his Factors, Servants and Deputies, *&c.* Reſolved to be againſt Law. *Paſch.* 7. *H.* 8. *Rot.* 66. ſuch a Protection diſallowed, and the Sheriff amerced for not executing the Writ, *Mich.* 13. and 14 *Eliz.* in *Hitchcocks* Caſe, and many other of latter time: And there is a notable Record of Ancient time in 22 *E.* 1. *John de Merſhals* Caſe; *Non pertinet ad vicecomitem de protectione Regis Judicare, imo ad Curiam.*

Juſtice or Right] We ſhall not ſell, deny or delay Juſtice and Right, neither the *End*, which is *Juſtice*; nor the *Mean* whereby we may attain to the End, and that is the *Law*: Right, is taken here for *Law*, in the ſame ſence that Juſtice often is ſo called. 1. Becauſe it is the *Right Line*, whereby Juſtice

distributive is Guided and Directed; and therefore all the Commissioners of *Oier* and *Terminer*, of Gaol-delivery, of the Peace, *&c.* have this Clause, *Facturi quod ad Justititiam pertinet, secundum Legem & Consuetudinem Angliæ*; that is, to do *Justice and Right*, according to the Rule of the *Law and Custom* of *England*: and that which is called *Common Right* in 2 *E.* 3. is called *Common-Law* in 14 *E.* 3. *&c.* and in this sence it is taken, where it is said, *Ita quod stat Rectus in Curia, id est Legi in Curia.*

2. The Law is called *Rectum*, because it discovereth that which is Tort, *Crooked* or *Wrong*; for as Right signifieth Law, so Tort, Crooked or Wrong, signifieth Injuries, and *Injuria est contra Jus*, Injury is against Right. *Recta Linea est index sui & obliqui*, a right line is both *declaratory of it self and the oblique.* Hereby the Crooked Cord of that which is called *Discretion* appeareth to be unlawful, unless you take it as it ought to be, *discretio est discernere per Legem, quid sit Justum*, discretion is to discern by the Law what is Just.

3. It is called *Right*, because it is the best *Birthright* the Subject hath, for thereby his Goods, Lands, Wife and Children, his Body, Life, Honour and Estimation are protected from Injury and Wrong: *Major Hæreditas venit unicunq; nostrum a Jure & Legibus, quam a Parentibus*; *A greater Inheritance descends to us from the Laws, than from our Progenitors.*

Thus far the very words of that Oracle of our Law, the Sage and Learned *Coke*; which so fully and excellently explain this incomparable Law, that it will be superfluous to add any thing further thereunto.

A Con-

A Confirmation of the Charters of the Liberties of England, *and of the Forreſt, made in the* 35th *Year of* Edw. *the Firſt.*

EDward by the Grace of God King of *England*, Lord of *Ireland*, and Duke of *Guyan*, to all thoſe theſe preſent Letters ſhall hear or ſee, Greeting. Know ye, that we to the Honour of God, and of Holy Church, and to the profit of our Realm, have granted for us and our Heirs, that the Charter of Liberties, and the Charter of the Forreſt; which were made by Common Aſſent of all the Realm, in the time of King *Henry* our Father, ſhall be kept in every point without Breach. And we will, that the ſame Charter ſhall be ſent under our Seal, as well to our Juſtices of the Forreſt, as to others, and to all Sheriffs of Shires, and to all our other Officers, and to all our Cities throughout the Realm, together with our Writs, in the which it ſhall be contained that they cauſe the aforeſaid Charters to be publiſhed, and to declare to the People that we have Confirmed them in all points. And that our Juſticers, Sheriffs, Maiors, and other Miniſters which under us have the Laws of our Land to guide, ſhall allow the ſame Charters pleaded before them in Jugdment in all their points, that is to wit, the Great Charter as the Common Law, and the Charter of the Forreſt, for the Wealth of our Realm.

Chap. 2. And we will, that if any Judgment be given from henceforth contrary to the points of the Charters aforeſaid by the Juſticers, or by any other our Miniſters that hold plea before them, againſt the points of the Charters, it ſhall be undone and holden for nought.

Cap. 3. And we will that the ſame Charters ſhall be ſent under our Seal, to Cathedral Churches throughout our Realm, there to Remain, and ſhall be read before the People two times by the Year.

Cap. 4. And that all Archbiſhops and Biſhops ſhall pronounce the Sentence of Excommunication againſt all thoſe that by Word, Deed, or Council, do contrary to the foreſaid Charters, or that in any point break or undo them. And that the ſaid Curſes, be twice a Year denounced and publiſhed by the Prelates afore ſaid. And if the ſame Prelates or any of them, be Remiſs in the Denunciation of the ſaid Sentences, the Archbiſhop of *Canterbury* and *York* for the time being, ſhall compel and diſtrain them to the Execution of their Duties in Form aforeſaid.

Cap. 5 And for ſo much as divers People of our Realm are in fear, that the Aids and Tasks which they have given to us beforetime towards our Wars, and other Buſineſs of their own Grant, or good Will (however they were made) might turn to a bondage to them and their Heirs, becauſe they might be at another time found in the Rolls, and likewiſe for the prizes taken throughout the Realm by our Miniſters: We have granted for us and our Heirs, that we ſhall not draw no ſuch Aids, Tasks nor Priſes into a Cuſtom, for any that hath been done heretofore, be it by Roll, or any other Precedent that may be founden.

Cap. 6. Moerover, we have granted for us and our Heirs, as well to Archbiſhops, Biſhops, Abbots, Priors, and other folk of Holy Church, as alſo to Earls, Barons, and to all the Commonalty of the Land, that for no buſineſs from henceforth, we ſhall take ſuch manner of Aids, Tasks or Priſes, but by the common aſſent of the Realm, and for the common profit thereof; ſaving the Ancient Aids and Priſes due and accuſtomed.

Cap. 7. And for ſo much, as the more part of the Commonalty of the Realm find themſelves ſore griev-

ed

ed with the Maletot of Woolls, that is to wit, a Toll of Forty Shillings for every ſack of Wooll, and have made Petition to us for to Releaſe the ſame: *We* at their Requeſt have clearly Releaſed it, and have granted for us and our Heirs, that we ſhall not take ſuch things without their common conſent and good will, ſaving to Us and Our Heirs the Cuſtom of Woolls, Skins and Leather, granted before by the Commonalty aforeſaid. In Witneſs of which things we have cauſed our Letters to be Patent. Witneſs *Edward* our Son, at *London* the 10th of *October*, and the Twenty five Year of our Reign.

Sententia lata ſuper Chartas.

The Sentence of the Clergy againſt the Breakers of the Articles above written.

IN the Name of the Father, the Son, and the Holy Ghoſt, Amen. *Whereas our Sovereign* Lord *the King, to the Honour of God, and of Holy Church, and for the common profit of the Realm, hath granted for him and his Heirs for ever, theſe Articles above written*; Robert *Archbiſhop of* Canterbury, *Primate of all* England *admoniſhed all his Province once, twice, and thrice; Becauſe that ſhortneſs will not ſuffer ſo much Delay, as to give knowledge to all the People of* England *of theſe preſents in Writing. We therefore enjoyn all Perſons, of what Eſtate ſoever they be, that they and every of them, as much as in them is, ſhall uphold and maintain theſe Articles granted by our Sov. L. the K. in all points. And all thoſe that in any point do Reſiſt or break, or in any manner hereafter procure, Counſel, or any ways aſſent to riſiſt or break thoſe Ordinances, or go about it, by word or deed, openly or privily, by any manner of Pretence or Colour: We the foreſaid Archbiſhop by our Authority in this Writing expreſſed, do Excommunicate and accurſe, and from the Body*

of our Lord Jesu Christ, and from all the Company of Heaven, and from all the Sacraments of Holy Church do Sequester and exclude.

NOTES.

It may be observed, that this Curse is left out of our late Printed Statute-Book, though inserted at large in that Printed in three Volumns, in Queen *Elizabeth*'s days, *Anno*. 1557. There is likewise another like dreadful, but more full and expres Curse, Solemnly pronounced before in the time of King *Henry* 3d. which being also omitted in our Modern Statute-Book, I shall add here for the Readers satisfaction.

The Sentence or Curse given by the Bishops against the Breakers of the Great Charter.

IN *the Year of our Lord, One thousand two hundred and fifty three, the Third day of* May, *in the great Hall of the King at* Westminster, *in the Presence and by the assent of the Lord* Henry, *by the Grace of God, King of* England, *and the Lord* Richard *Earl of* Cornwal *his Brother*, Roger Bigot *Earl of* Norfolk *and* Suffolk, *Marshal of* England, Humphry *Earl of* Hereford, Henry *Earl of* Oxford, John Earl Warren, *and other Estates of the Realm of* England: William Boniface *by the Mercy of God Archbishop of* Canterbury, *Primate of all* England; *F. of* London, *H. of* Ely, *S. of* Worcester, *E. of* Lincoln, W. *of* Norwich, G. *of* Hereford, W. *of* Salisbury, W. *of* Durham, R. *of* Exeter, M. *of* Carlile, W. *of* Bath, E. *of* Rochester, T. *of Saint* Davids: *Bishops apparelled in Pontificials with Tapers burning, against the Breakers of the Churches Liberties, and of the Liberties or other Customs of the Realm of* England, *and namely of those which are contained in the Charter*

ter of the Common Liberties of England, and Charter of the Forrest, have denounced the Sentence of Excommunication in this Form. By the Authority of Almighty God, the Father, the Son, and the Holy Ghost, and of the Glorious Mother of God, and perpetual Virgin Mary, of the Blessed Apostles Peter and Paul, and of all Apostles, and of all Martyrs, of Blessed Edward King of England, and of all the Saints of Heaven: We Excommunicate, Accurse, and from the Benefits of our Holy Mother the Church we Sequester All those that hereafter willingly and maliciously deprive or spoil the Church of her Right: And all those that by any Craft or Wilines do Violate, Break, Diminish, or Change the Churches Liberties, and free Customs contained in the Charters of the Common Liberties, and of the Forrest, granted by our Lord the King, to Archbishops, Bishops and other Prelates of England, and likewise to the Earls, Barons, Knights, and other Freeholders of the Realm: And all that secretly or openly, by Deed, Word or Council, do make Statutes, or observe them being made, and that bring in Customs, or keep them when they be brought in, against the said Liberties, or any of them, the Writers, the Law-makers, Councellors, and the Executioners of them, and all those that shall presume to judge against them. All and every which Persons before mentioned, that wittingly shall commit any of the Premises, let them well know, that they incurr the foresaid Sentence ipso facto, [i. e. upon the Deed done.] And those that Commit ought ignorantly, and be admonished, except they reform themselves within 15 dayes after the time of the admonition, and make full satisfaction for that they have done, at the will of the Ordinary, shall be from that time forth wrapped in the said Sentence; and with the same Sentence we burden all those that presume to disturb the Peace of our Soveraign Lord the King, and of the Realm.

Too

To the perpetual Memory of which thing, we the forefaid Prelates have put our Seals to theſe preſents.

So Zealous were our Anceſtors to preſerve their Liberties from encroachments, that they employed all the ſtrength of humane Policy and Religious Obligations to ſecure them intire and inviolate. And ſince this Act is ſtill in as much force as the Act againſt Conventicles, I cannot fadome the Reaſon why our Prelates ſhould not as well hold themſelves obliged twice a Year to accurſe the Infringers thereof, as to Proſecute *Proteſtant Diſſenters:* However we may note, that by this Statute, *Chap.* 2. it is expreſly provided, that if any Judgments be given from that time forwards againſt any of the points of *Magna Charta*, they ſhall be annull'd and holden for nought; therefore *Quære* whether the conviction of *Proteſtant Diſſenters* by a Juſtice, and ſpoiling them of their goods without any Trial and Conviction by a Jury, (which is expreſly againſt the 29 *Chapter* of *Magna Charta*) ought not to be taken notice of, and redreſs'd, and the original Promoters thereof to be *Curs*'d by my Lords the *Biſhops* as aforeſaid?

A Statute made Anno 34 Edw. 1. *commonly called* de Tallageo non Concedendo.

CHAP. I.

The King or his Heirs ſhall have no Tallage or Aid without conſent of Parliament.

NO Tallage or Aid ſhall be taken or Levied by Us or our Heirs in our Realm, without the good Will and Aſſent of Arch-Biſhops, Biſhops, Earls, Barons, Knights, Burgeſſes, and other Freemen of the Land.

CHAP. II.

CHAP. II.

Nothing ſhall be purveyed to the Kings Uſe without the Owners conſent.

NO Officer of ours, or of our Heirs, ſhall take Corn, Leather, Cattel, or any other Goods of any manner of Perſon, without the good Will and Aſſent of the Party to whom the Goods belonged.

CHAP. III.

Nothing ſhall be taken of Sacks of Wooll by Colour of Maletot.

NOthing from henceforth ſhall be taken of Sacks of Wooll by colour or occaſion of Maletot.

CHAP. IV.

All Laws, Liberties, and Cuſtoms, confirmed.

WE Will and Grant for Us and our Heirs, That all Clerks and Lay-men of our Land, ſhall have their Laws, Liberties, and free Cuſtoms as largely and wholly, as they have uſed to have the ſame at any time when they had them beſt. (..) And if any Statutes have been made by Us and our Anceſtors, or any Cuſtoms brought in contrary to them, or any manner of Article contained in this preſent Charter: We Will and grant that ſuch manner of Statutes and Cuſtoms ſhall be void and fruſtrate for evermore.

CHAP. V.

Pardon granted to certain Offenders.

MOreover we have pardoned *Humphrey Bohun*, Earl of *Hereford*, and *Eſſex*, Conſtable of *England*, *Roger* Earl of *Norfolk* and *Suffolk*, Marſhal of *England*, and other Earls, Barons, Knights, Eſquires, and namely, *John de Ferrariis*, with all other being of their Fellowſhip, Confederacy, and Bond, and alſo of other that hold 20 *l.* Land in our Realm, whether they hold of us in Chief or of others, that were appointed at a day certain to paſs over with us into *Flanders*, the Rancour and Evil will born againſt

againſt us, and all other Offences if any they have committed againſt us, unto the making of this preſent Charter.

CHAP. VI.

The Curſe of the Church ſhall be Pronounced againſt the Breakers of this Charter.

AND for the more aſſurance of this thing, we will and grant that all Archbiſhops and Biſhops for ever, ſhall read this preſent Charter in Cathedral Churches twice in the Year, and upon the Reading thereof in every of their Pariſh-Churches ſhall openly Denounce accurſed all thoſe that willingly do procure to be done any thing contrary to the tenour, force and effect of this preſent *Charter* in any point and article. In witneſs of which thing we have ſet our Seal to this preſent *Charter*, together with the Seals of the Archbiſhops, Biſhops, which voluntarily have ſworn, that as much as in them is, they ſhall obſerve the tenour of this preſent Charter in all Cauſes and Articles, and ſhall extend their faithful Aid to the keeping thereof, *&c.*

The Comment.

THE word Tallage is derived from the *French* word *Tailler*, to ſhare or cut out a part, and is Metaphorically uſed for any Charge, when the King or any other does cut out or take away any part or ſhare out of a Mans Eſtate, and being a general word, it includes all Subſidies, Taxes, Tenths, Aids, Impoſitions or other Charges whatſoever.

The word *Maletot* ſignifies an Evil (that is, an unjuſt) Toll, Cuſtom, Impoſition or Sum of Money.

The occaſion of making this Statute was this: King *Edward* being injured by the *French* King, reſolves to make War againſt him, and in order thereunto requires of *Humphrey le Bohun* Earl of *Hereford* and *Eſſex*, and Conſtable of *England*, and of *Roger Bigot*

Bigot Earl of *Norfolk* and *Suffolk*, and *Marſhal* of *England*, and of all the *Earls*, *Barons*, *Knights*, *Eſquires* and *Freeholders* of 20 *l.* Land, whether they held of him in *Capite*, to contribute towards ſuch his expedition, that is, to go in Perſon or find ſufficient Men in their places in his Army; which the Conſtable and Marſhal, and many of the *Knights* and *Eſquires*, and eſpecially this *John Ferrers* taking part with them and all the Freemen, ſtoutly denyed, unleſs it were ſo ordained and determined by common conſent in Parliament according to Law. And it ſeems the conteſt grew ſo hot, that *Baker*'s Chronicle, *Folio* 99. relates a ſtrange Dialogue that paſs'd between them, *viz.* That when the *Earl Marſhal* told the King, *That if his Majeſty pleaſed to go in Perſon, he would then go with him, and march before him in the Van-Guard, as by right of Inheritance he ought to do; but otherwiſe he would not ſtir; the King told* him plainly, *he ſhould go with any other, though he went not in Perſon. I am not ſo bound* (ſaith the Earl) *neither will I take that Journey without* you: The King ſwore, *By God, Sir Earl, you ſhall either go or Hang:* And *I ſwear by the ſame Oath* (ſaid the Earl) *I will neither go nor Hang.* And ſo the King was forc'd to diſpatch his expedition without them. And yet (ſaith my Lord *Coke*) althô the King had conceived a deep diſpleaſure againſt the Conſtable, Marſhal, and others of the Nobility, Gentry, and Commons of the Realm, for denying that which he ſo much deſired, yet, *for that they ſtood in defence of their Laws, Liberties, and free Cuſtomes*, the ſaid King *Edward* the Firſt, who (as Sir *William Herle* Chief Juſtice of the Common-Pleas, who lived in his time and ſerved him, ſaid in the time of King *Edward* the 3d.) was *the wiſeſt King that ever was*; did after his return from beyond the Seas, not only conſent to this *Statute*, whereby all ſuch Tallages and Impoſitions are forbidden

bidden for the future, but alſo paſſes a Pardon to the ſaid Nobles, *&c.* of all Rancour, Ill-will and Tranſgreſſions, *If any they have committed*; which laſt words were added, leſt by acceptance of a Pardon of Tranſgreſſion, they ſhould implicitely confeſs that they had Tranſgreſſed; ſo careful were the Lords and Commons in former times to preſerve the Ancient Laws, Liberties, and free Cuſtoms of their Country.

But note, theſe words, *Si quas fecerint*, *If any they have committed*, are left out in all the Printed Books of Statutes; but they are in this Statute recited by *Coke*, in his ſecond Book of Inſtitutes, *Fo.* 535. and ſpecially noted, which he would never have done, if it had not been ſo in the *Rolls*. And ſince 'tis probable there may be many more like *Omiſſions*, *Miſtakes* or *Falſifications*, crept into the Prints, and for that the *Record* and not the printed *Statute-Book* (varying from the *Records*) is *the Law*, It were to be wiſhed that all the *Rolls of Acts of Parliament* were carefully by ſome Perſons of Learning and Integrity, view'd and *Compared* with the Prints, and notice taken of all ſuch *Variations*, and of *Errors* committed in the Tranſlations, and of any Statutes of a publick Import, if in force, that were *never printed*, and the ſame to be made publick.

Anno 25 *Edw.* 3.

CAP. II.

A Declaration what Offences ſhall be adjudged Treaſon.

WHereas diverſe opinions have been before this time in what Caſe Treaſon ſhall be ſaid, and in what not. (2.) The King at the Requeſt of the Lords and of the Commons, hath made a declaration in the manner as hereafter followeth, that is to ſay, When a Man doth Compaſs or Imagine

gine the Death of our Lord the King, or of our Lady his Queen, or of their eldeſt Son and Heir. (3.) Or if a man do violate the Kings Companion, or the Kings Eldeſt Daughter unmarried, or the Wife of the Kings Eldeſt Son and Heir. (4.) Or if a Man do Levy War againſt our Lord the King in his Realm, or be Adherent to the Kings Enemies in his Realm, giving them Aid and Comfort in the Realm, or elſewhere, and thereof be provably Attainted of open Deed by the People of their Condition. (5.) And if a Man Counterfeit the Kings Great or Privy-Seal, or his Money. (6.) And if a Man bring falſe Money into this Realm, Counterfeit to the Money of *England*, as the Money called *Luſhburgh*, or other like to the ſaid Money of *England*, knowing the Money to be falſe, to Merchandiſe, or make payment, in deceit of our ſaid Lord the King, and of his People. (7.) And if a Man Slay the Chancellor, Treaſurer, or the Kings Juſtice of the one Bench or the other, Juſtices in *Eyre*, or Juſtices of Aſſize, and all other Juſtices Aſſigned to Hear and Determine, being in their Places doing their Offices. (8.) And it is to be underſtood, that in the Caſes above rehearſed that ought to be judged Treaſon, which extends to our Lord the King, and of his Royal Majeſty. (9.) And of ſuch Treaſon the Forfeiture of the Eſcheats pertaineth to our Lord, as well of the Lands and Tenement holden of other, as of himſelf. (10.) And moreover, there is another manner of Treaſon, that is to ſay, when a Servant ſlayeth his Maſter, or a Wife her Husband, or when a Man, Secular or Religious, ſlayeth his Prelate, to whom he oweth Faith and Obedience. (11.) And of ſuch Treaſon the Eſcheats ought to pertain to every Lord of his own Fee. (12.) And becauſe that many other like Caſes of Treaſon may happen in time to come, which a man cannot think nor declare at this preſent time; it is Accorded, That if any other

Caſe,

Caſe, ſuppoſed Treaſon, which is not above ſpecified, doth happen before any Juſtices, the Juſtices ſhall tarry without any going to Judgment of the Treaſon, till the Cauſe be ſhewed and declared before the King and his Parliament, whether it ought to be judged Treaſon or other Felony. (13.) And if percaſe any Man of this Realm, Ride Armed covertly or ſecret with Men of Arms againſt any other, to Slay him, or Rob him, or Take him, or Retain him till he hath made Fine or Ranſome for to have his deliverance, it is not the mind of the King nor his Council, that in ſuch Caſe it ſhall be judged Treaſon, but ſhall be judged Felony or Treſpaſs, according to the Laws of the Land of old time uſed, and according as the Caſe requireth. (14.) And if in ſuch Caſe or other like, before this time any Juſtices have judged Treaſon, and for this cauſe the Lands and Tenements have come into the Kings hands as forfeit, the chief Lords of the Fee ſhall have the Eſcheats of the Tenements holden of them, whether that the ſame Tenements be in the Kings hands, or in others, by Giſt, or in other manner. (15.) Saving always to our Lord the King the Year and the Waſte, and the forfeitures of Chattels, which pertain to him in the Caſes above named. (16.) And that the Writs of *Scire Facias* be granted in ſuch Caſe againſt the Land-Tenants, without other Original, and without allowing any Protection in the ſaid Suit. (17.) And that of the Lands which be in the Kings hands, Writs be granted to the Sheriffs of the Counties where the Lands be, to deliver them out of the Kings hands without delay.

The

The Comment.

TR*eaſon* is derived from *Trahir*, which ſignifies Treacherouſly to betray; when it concerns he Government and the Publick, 'tis called *High reaſon*, but againſt particular Perſons, as a Wife illing her Husband, a Servant his Maſter, *&c.* it is *Petty Treaſon*,

High Treaſon in the Civil Law is called *Crimen Læſæ Majeſtatis*, a *Crime wronging Majeſty*, but n our Common-Law-Latine, *Alta proditio*, and in in Indictment for this offence the word *Proditorie* muſt be in.

Before the making this Act, ſo *many things* were harged as *High Treaſon*, That no Man knew how o behave himſelf: Now by this Statute, the particuars of that Grand Crime are reckoned up, and all others excluded, till declared by Parliament. And he ſettling of this Affair was eſteemed of ſuch Importance to the Publick-Weal, That the Parliament wherein this *Act* paſſed, was called long after *Benedictum Parliamentum*, *the Bleſſed Parliament*.

The ſubſtance of this Statute is branched out by my Lord *Cook* 3d. part of *Inſtit.* Fol. 3. into ſix Heads. *viz.*

The firſt concerning Death, by compaſſing or magining the death of the King, Queen, or Prince, nd declaring the ſame by ſome *Overt* Deed. By illing and murdering of the Chancellor, Treaſurer, uſtices of either Bench, Juſtices in *Eyre*, Juſtices of Aſſize, Juſtices of *Oier* and *Terminer*, In their Places doing their Offices.

The ſecond is to Violate, that is, to Carnally know he Queen, the Kings Eldeſt Daughter unmarried, he Princes Wife.

The third is, Levying War againſt the King.

The

The fourth is, Adhering to the Kings Enemies, within the Realm or without, and declaring the same by some overt Act.

The fifth is, Counterfeiting of the Great, the Privy Seal, or the Kings Coin.

The sixth and last, by bringing into this Realm Counterfeit Mony to the likeness of the Kings Coin.

Now as to the particular Exposition of the several parts of this Statute:

1. *When a man* doth compass, *&c.* in the Original it is *Quant Home*, which extends to both Sexes, but one that is *Non compos mentis*, or an Infant within the Age of discretion, is not included; but all *Aliens* within the Realm of *England*, being thereby under the Kings Protection, and owing a Local Allegiance, if they commit Treason may be punisht by this Act, but otherwise it is of an *Enemy*.

2. *To compass and Imagine*, Is to contrive, design or intend the death of the King; but this must be declared by some Overt Act. But declaring by an open Act a design to *Depose* or *Imprison* the King, is an Over Act to manifest the compassing his death. For they that will depose their King, will not stick to Murder him, rather than fail of their end, and (as King *Charles* the First excellently observed, and lamentably experienced) *There are commonly but few steps between the Prisons and the Graves of Princes.*

3. By the word *King*, is intended, 1. A King before his Coronation, as soon as ever the Crown descends upon him, for the Coronation is but a Ceremony. 2. A King *de Facto*, and not *de Jure*, is a King within this Act, and a Treason against him is punishable, thô the Right Heir get the Crown. 3. A Titular King, as the Husband of the Queen, is not a King within this Act, but the Queen is, for the word *King* here includes both Sexes.

4. What is to be understood by *the Kings Eldest Son and Heir within this Act?* I answer; 1. A second Son

Son after the death of the first Born, is within the Act, for he is then Eldest. Secondly, The Eldest Son of a Queen Regnant is as well within the Statute, as of a King. Thirdly, The Collateral Heir Apparent or Presumptive is not within this Statute. *Roger Mortimer* Earl of *March* was in *Anno Dom.* 1487. (11 *Rich.* 2.) Proclaimed Heir Apparent. *Anno* 39. *Hen.* 6. *Richard* Duke of *York* was likewise Proclaimed Heir Apparent, and so was *John de la Poolen*, Earl of *Lincoln*, by *Rich.* 3. And *Henry* Marquess of *Exeter*, by King *Henry* the 8. But none of these or the like are within the Purview of his Statute, saith my Lord *Coke*, 3 *Instit.* fol. 9.

5. Note, Whereas in the Printed Statute-Books, it is there said, *probably Attainted*, the same is a great error: For the words of the Record are, *Et de ceo PROVABLEMENT soit Attaint: And shall be thereof PROVABLY Attaint:* And I cannot but admire, that such a *Gross* mistake should be suffered, since my Lord *Coke* has so expressly observed the difference, in these words following, 3 *Instit.* fol. 12. *In this Branch* (says he) *four things are to be observed:* 1. *This word* [*Provablement*] *Provably, that is, upon* direct and manifest proof, *not upon* Conjectural presumptions *or* Inferences, *or* strains of Wit, *but upon good and sufficient proof. And herein the Adverb* [Provablement] provably, *hath a great force, and signifieth* a direct and plain proof, *which word the King, the Lords, and Commons in Parliament did use, for that the offence was hainous, and was so heavily and severely punished, as none other the like, and therefore the offender must* Provably *be Attainted, which words are as forcible,* as upon direct and manifest proof. *Note, the word is, not* [Probably] *for then* Commune Argumentum *might have served; but the word is,* [Provably] *be Attainted. Secondly, This word* [Attaint] *necessarily implyeth that he be proceeded with,*

with, and Attainted according to the due Courſe *and proceedings of Law, and not* by Abſolute power, *or by other means, as in former times had been uſed. And therefore if a Man doth adhere to the Enemies of the King, or be* ſlain *in open War againſt the King, or otherwiſe* die *before the Attainder of Treaſon,* he forfeiteth nothing, *becauſe (as this Act ſaith) he is* not Attainted: *wherein this Act hath altered that, which before this Act, in Caſe of Treaſon was taken for* Law; *And the Statute of* 34 E. 3. Cap. 12. *ſaves nothing to the King, but that which was* in Eſſe, *and pertaining to the King at the making of that Act. And this appeareth by a Judgment in Parliament in* Ann. 29. H. 6. Cap. 1. *That* Jack Cade *being ſlain in open Rebellion could no way be puniſhed, or forfeit any thing, and therefore was Attainted by that* Act *of High Treaſon.* Thirdly, *of open Deed, per Apertum Factum,* theſe words ſtrengthen the former Expoſition of [*Provablement,*] an *Overt Act* muſt be alledged in every Indictment upon this Act, and proved. Compaſſing by bare words is not an Overt Act, as appears by many *Temporary* Statutes againſt it. But there muſt be ſome open Act, which muſt be *manifeſtly proved.* As if divers do Conſpire the Death of the King, and the manner how, and thereupon provide *Weapons, Powder, Poiſon, Harneſs, ſend Letters,* or the like, for the Execution of the Conſpiracy. If a Man be Arraigned upon an Indictment of High Treaſon, and ſtand *Mute* [that is, refuſe to Plead] he is not to be *Preſſed* to death, but ſhall have the ſame Judgment, and incurr ſuch forfeiture, as if he had been Convicted by *Verdict,* or had confeſſed it. For this ſtandeth well with this word [*Provablement*] for *fatetur facinus qui judicium fugit.* But otherwiſe it is in caſe of Petit Treaſon, Murder, or other Felony. If a Subject Conſpire with a Forreign Prince to Invade the Realm

Realm by open Hostility, and prepare for the same by some *Overt Act*, this is a sufficient Overt Act for the death of the King. Fourthly, The Composition and Connexion of the words are to be observed, *viz.* [*Thereof be Attainted by open Deed*] This (as was resolved by the Justices in *Easter* Term 35 of *Eliz.*) relateth to the several and distinct Treasons before expressed (and specially to the *Compassing and Imagination of the death of the King, &c.* for that is a *secret* in the Heart) and therefore one of them cannot be an *Overt Act* for another, as for example: A Conspiracy is had to *Levy War*, this (as hath been said and so resolved) is no Treason by this Act until it be levied, therefore it is no Overt Act, or manifest proof of the Compassing the Death of the King within this Act; for the Words are [*de eo*, &c. *thereof*] that is, of the Compassing of the death. Divers latter Acts of Parliament have Ordained, That compassing by bare Words or Sayings, should be Treason, but are all either Repealed or Expired (*except only that of the* 12 *Car.* 2. *herein after recited, which is only to be in force during the Life of his present Majesty, whom God preserve:*) And it was wont to be said, bare Words may make an Heretick, but not a Traitor, without an Overt Act. And the Wisdom of the Makers of this *Law* would not make *Words only* to be Treason, seeing such variance commonly amongst the Witnesses is about the same, as few of them agree together. But if words be set down *in Writing* by the Delinquent himself, That is a sufficient Overt Act within this Statute.

In the Preamble of the Statute of 1 *Mar.* (concerning the Repeal of certain Treasons declared after this *Statute* of the 25. of *Edw.* 3. and before that time, and bringing back all things to the measures of this Statute) It is agreed by the whole Parliament, *That Laws justly made for the preservation of the Com-*

Common-wealth, without extream punishment, are more often obeyed and kept than Laws and Statutes made with great and extream punishments. And in special such Laws and Statutes so made, whereby not only the ignorant and rude unlearned People, but also learned and expert People minding honesty, are oftentimes trapped and snared, yea many times for Words only, *without other Fact or Deed done or perpetrated.* Therefore this Act of 25 *Edw.* 3. doth provide that there must be an Overt Act. But words without any Overt Act, are to be punisht in another degree, as an high Misprision.

By People of their condition] That is *per Pares*, by their *Equals.*

7. As to Treason *by Levying War against the King*, we must note, that thô Conspiring or Compassing to Levy War, without a War *de Facto*, be no Treason, yet if many Conspire a War, and only some few Actually Levy it, all are guilty of the Treason. Raising a Force to burn or throw down a particular Inclosure is only *a Riot*, but if it had been to have gone from Town to Town to throw down all Inclosures, or to change Religion, or the like, it were Levying of War, because the intended mischief is Publick. Holding a Fort or Castle against the Kings Forces, is Levying of War.

8. As touching the *Interpretative Treasons* by *Killing the* Chancellor, Treasurer, Justice of *one* or the *other* Bench, Justice in *Eyre*, or of *Assize*, or *Oier* and *Terminer*. Note, 1. This extends but only to the Persons here named, not to the Lord Steward, Constable, or Marshal, or Lords of Parliament. Secondly, It extends to those only during their Office. Thirdly, It extends only to Killing, not Wounding without Death.

But by the Stat. 3 *H.* 7. C. 14. Compassing to Kill the King or any of his Council, is made Felony.

9. Coun-

9. Counterfeiting the *Great* or *Privy Seal* is Treaſon; but it muſt be an *Actual* Counterfeiting thereof, *Compaſſing* to do it is no Treaſon: Affixing the Great Seal by the Chancellor without Warrant, is no Treaſon: Fixing a new Great Seal to another Patent, is a great *Miſpriſion*, but no Treaſon, being not a Counterfeiting within this Act: But Aiders and Conſenters are within this Act. The Counterfeiting of the Privy Signet or Sign Manual, is no Treaſon within this Act, but made by the Statute, 1. *Mar.* c. 6.

10. Treaſon concerning *Coin*, is either *Counterfeiting* the Kings *Coin*, and this was Treaſon at Common Law, and Judgment only as of Pettit Treaſon, but Clipping, *&c.* being made Treaſon by ſubſequent Statutes, the Judgment is to be Drawn, Hang'd, and Quarter'd. *Money* here extends only to the Proper Money of this Realm, But now by the 1. *M.* c. 6. Forging or Counterfeiting Money made current by Proclamation, is High Treaſon, and by 14. *Eliz.* c. 3. Forging of Forreign Coin, not current here, is Miſpriſion of Treaſon in the Forgers, their Aiders and Abettors——And not that the bare Forging of the Kings Coin, without Uttering, is Treaſon.

The ſecond Offence concerning Money, here declared to be Treaſon, is, If any perſon *bring into this Realm Counterfeit Money*: Where note. 1. It muſt be Counterfeit: 2. Counterfeited to the ſimilitude of Engliſh Money: 3. It muſt be brought from a Forreign Realm, and therefore not from *Ireland*: 4. It muſt be brought *knowingly*: 5. *Brought*, and not barely uttered here. But by the Statute *De Moneta*, if falſe or clipt money be found in a perſons hands, and he be ſuſpitious, he may be Arreſted till he can clear himſelf: 6. He muſt merchandize therewith, that is make *payment* thereof.

11. As this Statute leaves all other doubtful matters to be declared Treaſon in Parliament, but not to be

puniſh'd as ſuch till ſo declared. So in ſucceeding Kings Reigns abundance of other matters were declared Treaſon, which being found very grievous and dangerous, by the Statute of 1 *Mar. Cap.* 1. it is Enacted, *That thenceforth no Act, Deed, or Offence being by Act of Parliament, or Statute, made Treaſon, Petty Treaſon, or Miſpriſion of Treaſon, by Words, Writing, Ciphering, Deeds, or otherwiſe however, ſhall be taken, had, Deemed or Adjudged to be High-Treaſon, Petty Treaſon, or Miſpriſion of Treaſon, but only ſuch as be declared and expreſſed to be Treaſon, Petty Treaſon, or Miſpriſion of Treaſon, by this Statute of the* 25. Edw. 3.

12. The Offences made High Treaſon by Statutes *ſince* this firſt of *Mary*, are as follow.

Refuſing the Oath of *Supremacy* upon ſecond Tender, is *Treaſon* by 5. *Eliz. Cap.* 1. but no Corruption of Blood, ſo likewiſe is Extolling the Power of the Biſhop of *Rome*, a *Premunire*, and the bringing in of *Bulls*, or putting them in Execution or *Reconciling* to the Church of *Rome*, is Treaſon by the ſame Statute. Bringing in *Agnus Dei's* is a Premunire. 23. *Eliz. C.* 1. Alſo abſolving Subjects from their Obedience, or Reconciling them to the Obedience of *Rome* is Treaſon, 27. *Eliz. Cap.* 2. So is it likewiſe for a Prieſt coming into *England*, not ſubmitting in two days. The like for *Engliſh* men in Forreign Seminaries.

But Beſides theſe *Old Treaſons* ſince the happy Reſtauration of His Majeſty, The zealous regards his Subjects in Parliament had, for the *ſafety* of his Sacred Perſon and Government, thought fit to prefer and make the Statute following.

Anno Regni Car. 2. Regis, decimo tertio.

CAP. I.

An Act for Safety and Preservation of His Majesties Person and Government, against Treasonable *and* Seditious *Practises and Attempts.*

THE *Lords and Commons Assembled in Parliament, deeply Weighing and Considering the Miseries and Calamities, of well nigh twenty years, before your Majesties Happy Return, and withal Reflecting on the Causes and Occasions of so great and deplorable Confusions, do in all humility and thankfulness acknowledge your Majesties incomparable Grace and Goodness to your People, in your Free and General Pardon, Indempnity and Oblivion, by which your Majesty hath been pleased to deliver your Subjects, not only from the* Punishment, *but also from the* Reproach, *of their former Miscarriages, which unexempled Piety and Clemency of your Majesty hath Enflamed the Hearts of us your Subjects with an ardent desire to express all possible Zeal and Duty in the Care and Preservation of your Majesties Person (in whose Honour and Happiness consists the good and welfare of your people) and in preventing (as much as may be) all* Treasonable *and* Seditious *Practises and Attempts for the time to come. (2) And because the Growth and Increase of the late Troubles and Disorders, did in a very great measure proceed from a multitude of* Seditious Sermons, *Pamphlets and Speeches, daily Preached, Printed and Published with a Transcendent boldness, defaming the Person and Government of your Majesty and your Royal Father, wherein men were too much Encouraged, and*

(above all) from a wilful mistake of the Supream *and Lawful Authority, whilst men were forward to cry up and maintain those Orders and* Ordinances Oaths *and* Covenants, *to be Acts* Legal *and Warrantable, which in themselves had not the least Colour of Law or Justice to support them, from which kind of Distempers, as the present Age is not wholly freed, so Posterity may be apt to Relapse into them, if a timely* Remedy *be not provided.* (3) *We therefore the Lords and Commons in Parliament Assembled, having duly considered the Premisses, and Remembring that in the thirteenth year of the Reign of Queen* Elizabeth *of ever blessed Memory, a right good and profitable Law was made, for Preservation of* Her Majesties Person, *do most humbly beseech your most Excellent Majesty, that it may be Enacted.* (4) And be it Enacted *by the Kings most Excellent Majesty, by and with the Advice and Consent of the Lords and Commons in this present Parliament Assembled, and by Authority of the same, That if any Person or Persons whatsoever, after the four and twentieth day of* June, *in the year of our Lord one thousand six hundred sixty and one,* during the Natural Life of our most Gracious Soveraign Lord the King, *(whom God Almighty Preserve and Bless, with a Long and Prosperous Reign) shall within the Realm or without, Compass, Imagine, Invent, Devise, or intend* Death *or Destruction, or any Bodily Harm, tending to the* Death *or Destruction, Maim, or Wounding, Imprisonment or Restraint of the Person of the same our Soveraign Lord the King.* (5) *Or to deprive or depose him from the* Style, *Honour, or Kingly Name of the Imperial Crown of this Realm, or of any other His Majesties Dominions or Countries,* (6) *To Levy War against His Majesty within this Realm or without.* (7) *Or to move or stir any Forraigner, and Strangers with force to* Invade *this Realm, or any other*

his

His Majeſties Dominions or Countries, being under His Majeſties Obeyſance. (8.) *And ſuch Compaſſings, Imaginations, Inventions, Devices or Intentions, or any of them, ſhall expreſs, utter or declare by any* Printing, Writing, Preaching, or malicious and adviſed Speaking, *being Lawfully Convicted thereof, upon the Oaths of two* Lawful and Credible Witneſſes, *upon Tryal, or otherwiſe Convicted or Attainted by due Courſe of Law, then every ſuch perſon and perſons ſo as aforeſaid offending ſhall be deemed, declared and Adjudged to be* Traytors, *and ſhall ſuffer pains of Death, and alſo loſe and Forfeit as in Caſes of High Treaſon.*

2. *And be it further Enacted by the Authority aforeſaid, That if any perſon or perſons at any time after the four and twentieth day of* June, *in the year of our Lord, one thouſand ſix hundred ſixty and one;* during his Majeſties Life, *ſhall Malitiouſly and Adviſedly publiſh or affirm the King to be an* Heretick or Papiſt, *or that* he endeavourr to introduce Popery. (2.) *Or ſhall Malitiouſly and Adviſedly by Printing, Writing, Preaching, or other Speaking, Expreſs, Publiſh, Utter or Declare any words, ſentences, or other thing or things to* Incite or ſtir up the *people to Hatred or diſlike of the Perſon of His Majeſty, or the Eſtabliſhed Government,* (3) *Then every ſuch perſon and perſons, being thereof Legally Convicted, ſhall be diſabled to have or enjoy, and is hereby diſabled, and made incapable of having, holding, enjoying, or exerciſing* any Place, Office, or Promotion *Eccleſiaſtical, Civil or Military, or any other Imployment in Church and State, other than that of his* Peerage, *and ſhall likewiſe be liable to ſuch further and other Puniſhments, as by the Common Laws, or Statutes of this Realm, may be inflicted in ſuch Caſes.* (4) *And to the end that no manhereafter may be miſled into any Seditious or Unquiet Demeanour, out of an opinion that the Par-*

liament Begun and held at Weſtminſter, *upon the third day of* November, *in the year of our Lord, one thouſand ſix hundred and forty, is yet in being, which is undoubtedly* Diſſolved *and* Determined, *and ſo is hereby declared and adjudged to be fully diſſolved and determined.* (5) *Or out of an opinion that there lies any Obligation upon him from any Oath,* Covenant *or Engagement whatſoever, to endeavour a Change of Government, either in Church or State.* (6) *Or out of an Opinion,* that both Houſes of *Parliament*, or either *of them, have a* Legiſlative Power *without the King.* (7) *All which Aſſertions have been ſeditiouſly maintained in ſome Pamphlets lately Printed, and are dayly promoted by the Active Enemies of our Peace and Happineſs.*

3. *Be it therefore further Enacted by the Authority aforeſaid, That if any perſon or perſons at any time after the four and twentieth day of* June, *in the year of our Lord. one thouſand ſix hundred ſixty and one, ſhall Maliciouſly and Adviſedly, by Writing, Printing, Preaching or other* Speaking, *Expreſs, Publiſh, Utter, Declare, or Affirm, That the Parliament Begun at* Weſtminſter *upon the third day of* November, *in the year of our Lord, one thouſand ſix hundred and forty, is not yet Diſſolved,* or is not Determined, *or that it ought to be in being, or hath yet any Continuance or Exiſtence.* (2) *Or that there lies any Obligation on him, or any other perſon from any Oath,* Covenant *or Engagement whatſoever, to endeavour* a Change of Government, *either in* Church or State. (3) *Or that both Houſes of* Parliament, *or either Houſe of Parliament, have or hath* a Legiſlative Power *without the King, or any other words to the ſame Effect.* (4) *That then every ſuch perſon and perſons ſo as aforeſaid offending ſhall incurr the danger and penalty of a* Premunire *mentioned in a*

Statute

Statute made in the sixteenth year of the Reign of King Richard *the Second.* (5) *And it is hereby also declared, That the Oath usually called the* Solemn League and Covenant, *was in it self an* Unlawful *Oath, and Imposed upon the Subjects of this Realm, against the* Fundamental Laws *and Liberties of this Kingdom.* (6) *And that all Orders and Ordinances, or pretended Orders and Ordinances of both or either Houses of Parliament, for imposing of Oaths, Covenants or Engagements, Levying of Taxes, or Raising of Forces and Arms, to which the* Royal Assent, *either in Person or by Commission, was not expresly had or given, were in the first Creation and Making, and still are, and so shall be taken to be* Null and Void *to all Intents and Purposes whatsoever.* (7) *Provided nevertheless, That all and every person and persons, Bodies Politick and Corporate, who have been, or shall at any time hereafter be questioned for any thing Acted or Done by Colour of any the Orders or Ordinances herein before mentioned and declared to be Null and Void, and are Indempnified by an Act, Intituled,* An Act of Free and General Pardon, Indemnity and Oblivion, *made in the twelfth year of His Majesties Reign that now is, or shall be Indemnified by any Act of Parliament, shall and may make such use of the said Orders and Ordinances for their Indemnity according to the true intent and meaning of the said Act, and no other, as he or they might have done, if this Act had not been made; any thing in this Act contained notwithstanding.*

4. *Provided always, That no person be Prosecuted for any of the Offences in this Act mentioned (other than such as are made and declared to be* High Treason) *unless it be* by order of the Kings Majesty, his Heirs or Successors, under his or their Sign Manual, or by order of the Council Table of his Majesty, his Heirs or Successors, directed unto the Attorney Ge-

with, and Attainted according to the due Courſe *and proceedings of Law, and not* by Abſolute power, *or by other means, as in former times had been uſed. And therefore if a Man doth adhere to the Enemies of the King, or be* ſlain *in open War againſt the King, or otherwiſe* die *before the Attainder of Treaſon*, he forfeiteth nothing, *becauſe (as this Act ſaith) he is* not Attainted *: wherein this Act hath altered that, which before this Act, in Caſe of Treaſon was taken for* Law; *And the Statute of* 34 E. 3. Cap. 12. *ſaves nothing to the King, but that which was* in Eſſe, *and pertaining to the King at the making of that Act. And this appeareth by a Judgment in Parliament in* Ann. 29. H. 6. Cap. 1. *That* Jack Cade *being ſlain in open Rebellion could no way be puniſhed, or forfeit any thing, and therefore was Attainted by that* Act *of High Treaſon.* Thirdly, *of open Deed, per Apertum Factum*, theſe words ſtrengthen the former Expoſition of [*Provablement,*] an *Overt Act* muſt be alledged in every Indictment upon this Act, and proved. Compaſſing by bare words is not an Overt Act, as appears by many *Temporary* Statutes againſt it. But there muſt be ſome open Act, which muſt be *manifeſtly proved.* As if divers do Conſpire the Death of the King, and the manner how, and thereupon provide *Weapons, Powder, Poiſon, Harneſs, ſend Letters*, or the like, for the Execution of the Conſpiracy. If a Man be Arraigned upon an Indictment of High Treaſon, and ſtand *Mute* [that is, refuſe to Plead] he is not to be *Preſſed* to death, but ſhall have the ſame Judgment, and incurr ſuch forfeiture, as if he had been Convicted by *Verdict*, or had confeſſed it. For this ſtandeth well with this word [*Provablement*] for *fatetur facinus qui judicium fugit.* But otherwiſe it is in caſe of Petit Treaſon, Murder, or other Felony. If a Subject Conſpire with a Forreign Prince to Invade the Realm

Realm by open Hoſtility, and prepare for the ſame by ſome *Overt Act*, this is a ſufficient Overt Act for the death of the King. Fourthly, The Compoſition and Connexion of the words are to be obſerved, *viz.* [*Thereof be Attainted by open Deed*] This (as was reſolved by the Juſtices in *Eaſter* Term 35 of *Eliz.*) relateth to the ſeveral and diſtinct Treaſons before expreſſed (and ſpecially to the *Compaſſing and Imagination of the death of the King, &c.* for that is a *ſecret* in the Heart) and therefore one of them cannot be an *Overt Act* for another, as for example: A Conſpiracy is had to *Levy War*, this (as hath been ſaid and ſo reſolved) is no Treaſon by this Act until it be levied, therefore it is no Overt Act, or manifeſt proof of the Compaſſing the Death of the King within this Act; for the Words are [*de eo*, &c. *thereof*] that is, of the Compaſſing of the death. Divers latter Acts of Parliament have Ordained, That compaſſing by bare Words or Sayings, ſhould be Treaſon, but are all either Repealed or Expired (*except only that of the* 12 *Car.* 2. *herein after recited, which is only to be in force during the Life of his preſent Majeſty, whom God preſerve:*) And it was wont to be ſaid, bare Words may make an Heretick, but not a Traitor, without an Overt Act. And the Wiſdom of the Makers of this *Law* would not make *Words only* to be Treaſon, ſeeing ſuch variance commonly amongſt the Witneſſes is about the ſame, as few of them agree together. But if words be ſet down *in Writing* by the Delinquent himſelf, That is a ſufficient Overt Act within this Statute.

In the Preamble of the Statute of 1 *Mar.* (concerning the Repeal of certain Treaſons declared after this *Statute* of the 25. of *Edw.* 3. and before that time, and bringing back all things to the meaſures of this Statute) It is agreed by the whole Parliament, *That Laws juſtly made for the preſervation of the Com-*

Common-wealth, without extream punishment, are more often obeyed and kept than Laws and Statutes made with great and extream punishments. And in special such Laws and Statutes so made, whereby not only the ignorant and rude unlearned People, but also learned and expert People minding honesty, are oftentimes trapped and snared, yea many times for Words only, *without other Fact or Deed done or perpetrated.* Therefore this Act of 25 *Edw.* 3. doth provide that there must be an Overt Act. But words without any Overt Act, are to be punisht in another degree, as an high Misprision.

By People of their condition] That is *per Pares*, by their *Equals.*

7. As to Treason *by Levying War against the King*, we must note, that thô Conspiring or Compassing to Levy War, without a War *de Facto*, be no Treason, yet if many Conspire a War, and only some few Actually Levy it, all are guilty of the Treason. Raising a Force to burn or throw down a particular Inclosure is only *a Riot*, but if it had been to have gone from Town to Town to throw down all Inclosures, or to change Religion, or the like, it were Levying of War, because the intended mischief is Publick. Holding a Fort or Castle against the Kings Forces, is Levying of War.

8. As touching the *Interpretative Treasons* by *Killing the* Chancellor, Treasurer, Justice of *one* or the *other* Bench, Justice in *Eyre*, or of *Assize*, or *Oier* and *Terminer*. Note, 1. This extends but only to the Persons here named, not to the Lord Steward, Constable, or Marshal, or Lords of Parliament. Secondly, It extends to those only during their Office. Thirdly, It extends only to Killing, not Wounding without Death.

But by the Stat. 3 *H.* 7. C. 14. Compassing to Kill the King or any of his Council, is made Felony.

9. Coun-

9. Counterfeiting the *Great* or *Privy Seal* is Treaſon; but it muſt be an *Actual* Counterfeiting thereof, *Compaſſing* to do't is no Treaſon: Affixing the Great Seal by the Chancellor without Warrant, is no Treaſon: Fixing a new Great Seal to another Patent, is a great *Miſpriſion*, but no Treaſon, being not a Counterfeiting within this Act: But Aiders and Conſenters are within this Act. The Counterfeiting of the Privy Signet or Sign Manual, is no Treaſon within this Act, but made by the Statute, 1. *Mar.* c. 6.

10. Treaſon concerning *Coin*, is either *Counterfeiting* the Kings *Coin*, and this was Treaſon at Common Law, and Judgment only as of Pettit Treaſon, but Clipping, *&c* being made Treaſon by ſubſequent Statutes, the Judgment is to be Drawn, Hang'd, and Quarter'd. *Money* here extends only to the Proper Money of this Realm, But now by the 1. *M.* c. 6. Forging or Counterfeiting Money made current by Proclamation, is High Treaſon, and by 14. *Eliz.* c. 3. Forging of Forreign Coin, not current here, is Miſpriſion of Treaſon in the Forgers, their Aiders and Abettors——And not that the bare Forging of the Kings Coin, without Uttering, is Treaſon.

The ſecond Offence concerning Money, here declared to be Treaſon, is, If any perſon *bring into this Realm Counterfeit Money*: Where note. 1. It muſt be Counterfeit: 2. Counterfeited to the ſimilitude of Engliſh Money: 3. It muſt be brought from a Forreign Realm, and therefore not from *Ireland*: 4. It muſt be brought *knowingly*: 5. *Brought*, and not barely uttered here. But by the Statute *De Moneta*, if falſe or clipt money be found in a perſons hands, and he be ſuſpitious, he may be Arreſted till he can clear himſelf: 6. He muſt merchandize therewith, that is make *payment* thereof.

11. As this Statute leaves all other doubtful matters to be declared Treaſon in Parliament, but not to be

puniſh'd as ſuch till ſo declared. So in ſucceedin[g] Kings Reigns abundance of other matters were de[-]clared Treaſon, which being found very grievou[s] and dangerous, by the Statute of 1 *Mar. Cap.* 1. it is Enacted, *That thenceforth no Act, Deed, or Offence being by Act of Parliament, or Statute, made Treaſon, Petty Treaſon, or Miſpriſion of Treaſon, by Words, Writing, Ciphering, Deeds, or otherwiſe however, ſhall be taken, had, Deemed or Adjudged to be High-Treaſon, Petty Treaſon, or Miſpriſion of Treaſon, but only ſuch as be declared and expreſſed to be Treaſon, Petty Treaſon, or Miſpriſion of Treaſon, by this Statute of the* 25. Edw. 3.

12. The Offences made High Treaſon by Statutes *ſince* this firſt of *Mary*, are as follow.

Refuſing the Oath of *Supremacy* upon ſecond Tender, is *Treaſon* by 5. *Eliz. Cap.* 1. but no Corruption of Blood, ſo likewiſe is Extolling the Power of the Biſhop of *Rome*, a *Premunire*, and the bringing in of *Bulls*, or putting them in Execution or *Reconciling* to the Church of *Rome*, is Treaſon by the ſame Statute. Bringing in *Agnus Dei*'s is a Premunire. 23. *Eliz. C.* 1. Alſo abſolving Subjects from their Obedience, or Reconciling them to the Obedience of *Rome* is Treaſon, 27. *Eliz. Cap.* 2. So is it likewiſe for a Prieſt coming into *England*, not ſubmitting in two days. The like for *Engliſh* men in Forreign Seminaries.

But Beſides theſe *Old Treaſons* ſince the happy Reſtauration of His Majeſty, The zealous regards his Subjects in Parliament had, for the *ſafety* of his Sacred Perſon and Government, thought fit to prefer and make the Statute following.

Anno

Anno Regni Car. 2. Regis, decimo tertio.

CAP. I.

An Act for Safety and Preservation of His Majesties Person and Government, against Treasonable *and* Seditious *Practises and Attempts.*

THE *Lords and Commons Assembled in Parliament, deeply Weighing and Considering the Miseries and Calamities, of well nigh twenty years, before your Majesties Happy Return, and withal Reflecting on the Causes and Occasions of so great and deplorable Confusions, do in all humility and thankfulness acknowledge your Majesties incomparable Grace and Goodness to your People, in your Free and General Pardon, Indempnity and Oblivion, by which your Majesty hath been pleased to deliver your Subjects, not only from the* Punishment, *but also from the* Reproach, *of their former Miscarriages, which unexempled Piety and Clemency of your Majesty hath Enflamed the Hearts of us your Subjects with an ardent desire to express all possible Zeal and Duty in the Care and Preservation of your Majesties Person (in whose Honour and Happiness consists the good and welfare of your people) and in preventing (as much as may be) all* Treasonable *and* Sedititious *Practises and Attempts for the time to come. (2) And because the Growth and Increase of the late Troubles and Disorders, did in a very great measure proceed from a multitude of* Seditious Sermons, *Pamphlets and Speeches, daily Preached, Printed and Published with a Transcendent boldness, defaming the Person and Government of your Majesty and your Royal Father, wherein men were too much Encouraged, and*

(above all) from a wilful mistake of the Supream *and Lawful Authority, whilst men were forward to cry up and maintain those Orders and* Ordinances *Oaths and Covenants, to be Acts* Legal *and Warrantable, which in themselves had not the least Colour of Law or Justice to support them, from which kind of Distempers, as the present Age is not wholly freed, so Posterity may be apt to Relapse into them, if a timely* Remedy *be not provided.* (3) *We therefore the Lords and Commons in Parliament Assembled, having duly considered the Premisses, and Remembring that in the thirteenth year of the Reign of Queen* Elizabeth *of ever blessed Memory, a right good and profitable Law was made, for Preservation of* Her Majesties Person, *do most humbly beseech your most Excellent Majesty, that it may be Enacted.* (4) And be it Enacted *by the Kings most Excellent Majesty, by and with the Advice and Consent of the Lords and Commons in this present Parliament Assembled, and by Authority of the same, That if any Person or Persons whatsoever, after the four and twentieth day of* June, *in the year of our Lord one thousand six hundred sixty and one,* during the Natural Life of our most Gracious Soveraign Lord the King, *(whom God Almighty Preserve and Bless, with a Long and Prosperous Reign) shall within the Realm or without, Compass, Imagine, Invent, Devise, or intend* Death *or Destruction, or any* Bodily Harm, *tending to the* Death *or Destruction, Maim, or Wounding, Imprisonment or Restraint of the Person of the same our Soveraign Lord the King.* (5) *Or to deprive or depose him from the* Style, *Honour, or Kingly Name of the Imperial Crown of this Realm, or of any other His Majesties Dominions or Countries,* (6) *To Levy War against His Majesty within this Realm or without.* (7) *Or to move or stir any Forraigner, and Strangers with force to* Invade *this Realm, or any other*

in

His Majeſties Dominions or Countries, being under His Majeſties Obeyſance. (8.) *And ſuch Compaſſings, Imaginations, Inventions, Devices or Intentions, or any of them, ſhall expreſs, utter or declare by any* Printing, Writing, Preaching, or malicious and adviſed Speaking, *being Lawfully Convicted thereof, upon the Oaths of two* Lawful and Credible Witneſſes, *upon Tryal, or otherwiſe Convicted or Attainted by due Courſe of Law, then every ſuch perſon and perſons ſo as aforeſaid offending ſhall be deemed, declared and Adjudged to be* Traytors, *and ſhall ſuffer pains of Death, and alſo loſe and Forfeit as in Caſes of High Treaſon.*

2. *And be it further Enacted by the Authority aforeſaid, That if any perſon or perſons at any time after the four and twentieth day of* June, *in the year of our Lord, one thouſand ſix hundred ſixty and one,* during his Majeſties Life, *ſhall Malitiouſly and Adviſedly publiſh or affirm the King to be an* Heretick or Papiſt, *or that* he endeavourr to introduce Popery. (2.) *Or ſhall Malitiouſly and Adviſedly by Printing, Writing, Preaching, or other Speaking, Expreſs, Publiſh, Utter or Declare any words, ſentences, or other thing or things to* Incite or ſtir up the *people to Hatred or diſlike of the Perſon of His Majeſty, or the Eſtabliſhed Government,* (3) *Then every ſuch perſon and perſons, being thereof Legally Convicted, ſhall be disabled to have or enjoy, and is hereby diſabled, and made incapable of having, holding, enjoying, or exerciſing* any Place, Office, or Promotion *Eccleſiaſtical, Civil or Military, or any other Imployment in Church and State, other than that of his* Peerage, *and ſhall likewiſe be liable to ſuch further and other Puniſhments, as by the Common Laws, or Statutes of this Realm, may be inflicted in ſuch Caſes.* (4) *And to the end that no manhereafter may be miſled into any Seditious or Unquiet Demeanour, out of an opinion that the Par-*

liament Begun and held at Weſtminſter, *upon the third day of* November, *in the year of our Lord, one thouſand ſix hundred and forty, is yet in being, which is undoubtedly* Diſſolved *and* Determined, *and ſo is hereby declared and adjudged to be fully diſſolved and determined.* (5) *Or out of an opinion that there lies any Obligation upon him from any Oath,* Covenant *or Engagement whatſoever, to endeavour a Change of Government, either in Church or State.* (6) *Or out of an Opinion,* that both Houſes of *Parliament*, or either *of them, have a* Legiſlative Power *without the King.* (7) *All which Aſſertions have been ſeditiouſly maintained in ſome Pamphlets lately Printed, and are dayly promoted by the Active Enemies of our Peace and Happineſs.*

3. *Be it therefore further Enacted by the Authority aforeſaid, That if any perſon or perſons at any time after the four and twentieth day of* June, *in the year of our Lord. one thouſand ſix hundred ſixty and one, ſhall Maliciouſly and Adviſedly, by Writing, Printing, Preaching or other* Speaking, *Expreſs, Publiſh, Utter, Declare, or Affirm, That the Parliament Begun at* Weſtminſter *upon the third day of* November, *in the year of our Lord, one thouſand ſix hundred and forty, is not yet Diſſolved,* or is not Determined, *or that it ought to be in being, or hath yet any Continuance or Exiſtence.* (2) *Or that there lies any Obligation on him, or any other perſon from any Oath,* Covenant *or Engagement whatſoever, to endeavour* a Change of Government, *either in* Church or State. (3) *Or that both Houſes of Parliament, or either Houſe of Parliament, have or hath* a Legiſlative Power *without the King, or any other words to the ſame Effect.* (4) *That then every ſuch perſon and perſons ſo as aforeſaid offending ſhall incurr the danger and penalty of a* Premunire *mentioned in a Statute*

Statute made in the ſixteenth year of the Reign of King Richard *the Second.* (5) *And it is hereby alſo declared, That the Oath uſually called the* Solemn League and Covenant, *was in it ſelf an* Unlawful *Oath, and Impoſed upon the Subjects of this Realm, againſt the* Fundamental Laws *and Liberties of this Kingdom.* (6) *And that all Orders and Ordinances, or pretended Orders and Ordinances of both or either Houſes of Parliament, for impoſing of Oaths, Covenants or Engagements, Levying of Taxes, or Raiſing of Forces and Arms, to which the* Royal Aſſent, *either in Perſon or by Commiſſion, was not expreſly had or given, were in the firſt Creation and Making, and ſtill are, and ſo ſhall be taken to be* Null and Void *to all Intents and Purpoſes whatſoever.* (7) *Provided nevertheleſs, That all and every perſon and perſons, Bodies Politick and Corporate, who have been, or ſhall at any time hereafter be queſtioned for any thing Acted or Done by Colour of any the Orders or Ordinances herein before mentioned and declared to be Null and Void, and are Indempnified by an Act, Intituled,* An Act of Free and General Pardon, Indempnity and Oblivion, *made in the twelfth year of His Majeſties Reign that now is, or ſhall be Indemnified by any Act of Parliament, ſhall and may make ſuch uſe of the ſaid Orders and Ordinances for their Indemnity according to the true intent and meaning of the ſaid Act, and no other, as he or they might have done, if this Act had not been made; any thing in this Act contained notwithſtanding.*

4. *Provided always, That no perſon be Proſecuted for any of the Offences in this Act mentioned (other than ſuch as are made and declared to be* High Treaſon) *unleſs it be* by order of the Kings Majeſty, his Heirs or Succeſſors, under his or their Sign Manual, or by order of the Council Table of his Majeſty, his Heirs or Succeſſors, directed unto the Attorney Ge-

neral for the time being, or ſome other of the Coun-cil learned to His Majeſty, *His Heirs or Succeſſors for the time being.* (2) *Nor ſhall any Perſon or perſons by vertue of this preſent Act incur any the Penalties herein before mentioned, unleſs he or they be Proſecuted* within ſix months *next after the offence Committed, and* Indicted thereupon within three months after *ſuch Proſecution; any thing herein contained to the contrary notwithſtanding.*

5. *Provided always, and be it Enacted, That no perſon or perſons ſhall be Indicted, Arraigned, Condemned, Convicted or Attainted for any of the Treaſons or Offences aforeſaid, unleſs the ſame Offender or Offenders be thereof* Accuſed *by the Teſtimony and Diſpoſition* of two Lawful and Credible Witneſſes *upon Oath.* (2) *Which Witneſſes at the time of the ſaid Offender or Offenders Arraignment, ſhall be brought in perſon before him or them Face to Face, and ſhall openly avow and maintain upon Oath, what they have to ſay againſt him or them, concerning the Treaſon or Offences contained in the ſaid Indictment, unleſs the party or parties Arraigned ſhall willingly without violence* Confeſs *the ſame.*

6. *Provided likewiſe and be it Enacted, That this Act, or any thing therein contained, ſhall not extend to deprive* either of the Houſes of Parliament, *or any of their Members, of their juſt Antient Freedom, and Priviledge of* Debating *any matters or buſineſs which ſhall be propounded or debated in either of the ſaid Houſes, or at any* Conferences *or* Committees *of both or either of the ſaid Houſes of Parliament, or touching the* Repeal *or Alteration of any* Old, *or preparing any* New Laws, *or the Redreſſing of any* Publick Grievance; *but that the ſaid Members of either of the ſaid Houſes, an*

th

the Assistants of the House of Peers and every of them, shall have the same freedom of Speech, *and all other Privledges whatsoever, as they had before the making of this Act; any thing in this Act to the contrary thereof in any wise notwithstanding.*

7. *Provided always, and be it ordained and enacted,* That no Peer *of this Realm shall be Tryed for any Offences against this Act, but by his Peers; (2.) And further, that every Peer who shall be Convicted of any Offence against this Act, after such Conviction, be disabled during his Life,* to sit in Parliament, *unless His Majesty shall graciously be pleased to pardon him? (3) And if His Majesty shall grant his Pardon to any Peer of this Realm, or Commoner Convicted of any Offence against this Act, after such Pardon Granted, the Peer or Commoner so pardoned* shall be Restored *to all Intents and purposes as if he had never been Convicted, any thing in this Law to the contrary in any wise notwithstanding.*

Notes.

THough the wisdom of our Legislators is not generally for bringing *words* within the compass of *Treason*, yet upon emergent occasions it has been done, but then with a *Temporary Limitation*, as by the Statute 13. *Eliz.* here referred unto, during the Life of that Queen; In imitation whereof this present Act is made to remain in force during only the Life of our present Soveraign King *Charles* the Second, And the reasons for making this Temporary Law are assigned in the *preamble.*

This Statute makes *three sorts of Offences.* Some *High Treason*; some that *disable* and incapacitate from holding any *place* or *Office*; and some that are punishable by *Premunire.*

As to the first, 'tis hereby declared to be High

Treaſon during the Life of his preſent Majeſty,

1. Within or without the Realm to compaſs or intend the Death, Deſtruction, Maim, Wounding Imprisonment or Reſtraint of the King.

2. Or to deprive or *depoſe* him, or *Levy War* againſt him, within the Realm or without, to ſtir up Forreigners to *invade* the Realm.

If ſuch Compaſſings or Intentions be expreſſed, uttered or declared by any *Printing, Writing, Preaching*, or malitious and adviſed *ſpeaking*.

Being legally Convicted thereof upon the Oaths of *two lawful* and CREDIBLE Witneſſes: [By which words, the Statute ſeems to injoin and require ſome *more than Ordinary* Scrutiny into the Credit of the Witneſſes, for otherwiſe *Legal* had been enough, (and ſo is every man not Convict of *Perjury*) but Witneſſes in this Caſe muſt not be only *Legal* but *Credible*, not infamous, ſcandalous, or ſuſpected]

As to the ſecond, Maliciouſly and adviſedly to publiſh or affirm during his preſent Majeſties Life, that the King is an--*Heretick*--or--a Papiſt--or that he *endeavours to introduce Popery*.

Or maliciouſly and adviſedly by Writing Printing, Preaching, or ſpeaking to utter, expreſs or declare any Words, Sentences or thing, to ſtir up the people to *hatred or diſlike of the Perſon of His Majeſty* or the eſtabliſht Government.

Whoever is legally Convicted of any of theſe Crimes ſhall be diſabled to hold any *place, Office, or promotion*, Eccleſiaſtical, Civil or Military. And beſides be liable to ſuch puniſhments as by the Common Laws or Statutes may be inflicted.

As to the third, to declare, publiſh, or affirm, firſt, that the *Old long Parliament* of 40 is not *diſſolved*, or ought to be in being. Secondly, That there lies any obligation on ones-ſelf, or any other perſon from any *Oath*, Covenant, or Engagement, to endeavour a change of Government either in Church or State.

Thirdly

Thirdly, that *either or both Houſes* of Parliament have a Legiſlative power without the King, or any other words to the ſame effect.

The perſon ſo offending ſhall incur the penalty of a *Premunire*, which by the Statute of 16 *Rich.* 2 *Cap.* 5. here referr'd unto, is this, *viz.* To be put out of the Kings *Protection*, their Lands and Tenements, goods and Chattels, *Forfeited* to the King, and their bodies to be ſeized, &c. But in this Act of the 13 *Caroli*, there are theſe Proviſo's.

1. As for the *two laſt Sorts* of Offences that are not Treaſon, none ſhall be proſecuted but by *order of the King*, under his Sign Manual, or of the privy Council.

2. As for the crimes made *Treaſons*, none ſhall be Indicted or Convicted unleſs they be *ACCUSED* by two Lawfull and *Credible* Witneſſes, touching the Addition of the word *Credible* to Lawfull, (which is here again repeated) we have ſpoken before; But muſt here further obſerve,

1. That by theſe expreſs words, this Statute provides that no man ſhall be *Indicted*, [that is, have a Bill found againſt him] upon this Statute for Treaſon, unleſs he be *Accuſed*, [that is, unleſs the matter be ſworn againſt him before the Grand Jury] by two not only Lawfull, but CREDIBLE Witneſſes, for the words are not only, *he ſhall* not be *Convicted* [which is the work of the *Petty Jury*, or Jury of Life and Death, as 'tis commonly called,] But he ſhall not be *Indicted* [which is the buſineſs of the Grand Jury] And therefore Grand-Juries beſides their *general and ordinary Right* and power by Law, have when any perſon is Indicted upon *this Statute*, a ſpecial right and direction from the *Act it ſelf* to Examine and be well ſatisfied in the *Credibility* of the Witneſſes; which if duly conſidered, would perhaps much mitigate the Clamours lately raiſed againſt ſome Juries for their Returning ſome Bills before them *Ignoramus*, though the matters therein were roundly

ſworn

ſworn unto by *Legal*, but probably in their eſteem and Judgment, as they were upon their Oaths, not ſufficiently *Credible* Witneſſes; eſpecially when their *Stories* were no leſs *Incredible* than their perſons.

Secondly, Note that as a perſon cannot be Convicted or Indicted, ſo neither can he be ſo much as *Committed* for any Offence made Treaſon by this Act, by or upon the Oaths of any *ſingle Witneſs*, though there ſhould be never ſo much preſumption that more may come in againſt him before he be brought to Trial, for the words are——*Unleſs he be thereof accuſed by the Teſtimony and depoſition of Two Lawful and Credible Witneſſes, which Witneſſes at his Arraignment ſhall be brought before him face to face*, &c. So that 'tis evidently intended the original accuſation before the Juſtice or Magiſtrate that ſhall Commit the perſon muſt be by two ſuch Witneſſes, and that the ſame two Witneſſes (and not *others*, leaving them that firſt charged him out, though yet others no doubt may be *added* to them) muſt give Evidence to the Grand Jury, and at his Trial.

3. There is in this Act a *third proviſo*, that no perſon ſhall incur *any* the Penalties in this Act mentioned *unleſs*, 1. He be *Proſecuted*, [that is charged before a *Magiſtrate*, or Committed] within ſix Months after the Offence Committed. Secondly, and unleſs he be Indicted thereupon within three Months after ſuch Proſecution. So that if in either of theſe Reſpects the time be elapſed, the Grand Jury ought not to find the Bill.

4. Provided, this Act ſhall not infringe the *Privileges* or Freedom of Debates in either of the Houſes of Parliament, or any Committee of them.

5. That a *Peer* ſhall be tryed for any Offence againſt this Act by his Peers, but if Convicted, ſhall be diſabled to ſit in Parliament during Life. And thus much for what is Treaſon at this day.

By the Statute of 1 and 2 *Phil.* and *Mar. cap* 10.

All

All Trials for Treaſon ſhall be only according to the Courſe of the Common Law. And though the greater part of that Statute, being Temporary, be expired, yet this Clauſe is ſtill in Force.

The Judgment in all Caſes of High Treaſon, except for Counterfeiting Coin (for a man) is, *That he ſhall be drawn on an Hurdle or Sledge to the place of Execution and there be Hanged by the Neck, to be cut down being yet alive, his Privy Members cut off, his Bowels ript up, taken out, and burnt before his face, his Head ſevered from his Body, his Body divided into four Quarters, which are to be diſpoſed of as the King ſhall order*——But for Counterfeiting Coin, only *Drawn and Hanged.* And in both Caſes for a Woman (for Modeſty ſake) it is only that ſhe ſhall be *Burnt.*

The reaſons or ſignification of this horrid Judgment on a man for *Treaſon*, are thus by ſome rendred and Interpreted.

1. He is drawn on a *Sledg* or *Hurdle* on the ground in the Dirt, to ſhew that his *Pride* is brought down, for Treaſon commonly ſprings from *Ambition.*

2. On this Hurdle he is drawn *backward*, to ſhew that his Actings have been contrary to Order, unnatural and *Prepoſterous.*

3. He is *Hanged* between Heaven and Earth, as *unworthy of either.*

4. He is cut down yet alive, and his *Privities cut off*, to ſhew that he was unfit to Propagate any *Poſterity.*

5. His *Head* is ſevered from his Body, becauſe his miſchevious *Brain* contrived the Treaſon.

6. His Body is *divided*, to ſhew that all his Machinations and Devices are *torn to pieces*, and brought to nought; and into *four parts*, that they may be tattered towards the four Quarters of the World.

Heading being part of the judgment in Treaſon, the King commonly to perſons of Quality Pardons

dons all the reſt, of the Sentence, and ſo they are only *Beheaded.* But if a perſon be Attainted of *Murder* or any other Felony, if he be Beheaded, 'tis no Execution of the Judgment, becauſe there the Judgment always is, that he *be Hanged till he be dead*, which cannot be altered. So that had Count *Coningſmark* lately been Convicted and Condemned for the Murder of Eſquire *Thynn*, all his *Guinies* or his *Friends* could not have preſerved him from the Gallows, unleſs they could have got an intire *Pardon.*

Any perſon being Indicted for Treaſon may *Challenge* [that is except againſt or refuſe] *Five and Thirty* Jurors, *peremptorily* [that is, for his pleaſure, or for reaſons beſt known to himſelf, and without aſſigning any Cauſe to the Court. But if he Challenge more, that is above three full Juries, he Forfeits his Goods, and Judgment of *Peinfort & dure*, [that is of being *preſſed* to Death] ſhall paſs upon him as one that refuſeth the Trial of the Law.

In Caſes of *Murder* and *Felony* a man cannot Challenge peremptorily above the number of Twenty; But with Cauſe he may except againſt more. And this is by the Stat. of 22. *H.* 8. *cap.* 14.

And certainly ſince the Law of *England*, which is a *Law of Mercy*, does in *Favour of Life*, not only order a man to be Tryed by a *Jury* of his Country and *Equals*, but alſo allows him to refuſe, and have Liberty of excepting againſt ſo many of thoſe as ſhall be *Impanelled* for that purpoſe; It cannot be ſuppoſed that the ſame Law ever intended that the Priſoner ſhould be denyed *a Copy of the Pannel* of his Jury, that ſo by the Information of his Friends or otherwiſe, he may know their *Qualities, Circumſtances* and *Inclinations*; for how elſe ſhall he know whom to *Challenge peremptorily*, and whom to *Challenge with Cauſe*; to allow a man ſuch Liberty of Challenge, and give him no opportunity of ſuch Inquiry

quiry, is but to *mock the Priſoner*, to whom poſſibly he whole Jury by *face and name* may be utter Strangers; and ſure the wiſdom of our Laws never thought every Priſoner ſo skilled in *Metopoſcopy*, that meerly by *looking* on a parcel of men he could tell which of them were *indifferent*, and which biaſſed againſt him.

Another Statute of King *Edward* the third.

Anno 2. *Edw.* 3. *cap.* 2.

In what Caſes only *Pardon* of Felony ſhall be granted, *&c.*

ITem, *Whereas Offendors have been greatly encouraged, becauſe the Charters of Pardon have been ſo* eaſily granted *in times paſt of Man-ſlaughters, Roberies, Felonies, and other Treſpaſſes againſt the Peace,* (2) *It is ordained and Enacted that ſuch Charters* ſhall not be granted, but only where the King may do it by his Oath, *that is to ſay, where a man ſlayeth another in his* own Defence, *or by* Miſfortune. (3) *And alſo they have been encouraged becauſe that the* Juſtices *of the Goal-Delivery, and of Oyer and Terminer*, have been procured by great men, *againſt the Form of the* Statute *made in the 27th year of the Reign of King* Edward, *Grandfather to our Lord the King that now is, wherein is Contained that Juſtices Aſſigned to take Aſſizes, if they be* Lay-Men, *ſhall make deliverance, and if the one be a Clerk, and the other a Lay-man, that the* Lay-Judge *with another of the Countrey aſſociate to him, ſhall deliver the Goals.* (4) *Wherefore it is Enacted, that Juſtices ſhall not be made againſt the Form of the ſaid Statute;* (5) *And that the Aſſizes, Attaints, and Certifications be taken before the Juſtices, commonly*

monly Aſſigned, which ſhould be good men and Lawful, having knowledg of the Law, and none other, after the Form if another Statute made in the time of the ſaid King Edward *the firſt.* (6) *And that the* Oyers and Terminers *ſhall not be granted, but before the Juſtices of the one Beneh or the other, or the Juſtices Errants, and that great hurt, or horrible Treſpaſſes, and of the Kings ſpecial Grace, after the Form of the Statute thereof ordained in time of the ſaid Grandfather, and none otherwiſe.*

The Comment.

Touching this Statute and ſeveral others to the ſame purpoſe, as 14. *Edw.* 3. *cap.* 14. and 10. *Edw.* 3. *cap.* 2. and 13. *R.* 2. *cap.* 1. and 16. *R. cap.* 6. &c.

We ſhall only give you the words of *Cook* in the third part of his Inſtit. fo. 236.

What things the King *may pardon*, and in what manner, and what *he cannot pardon*, falleth now to be treated of.

IN caſe of death of man, Robberies and Felonies againſt the Peace, divers Acts of Parliament have *Reſtrained the power of granting Charters of pardons*; firſt, that no ſuch Charters ſhall be granted, but in caſe *where the King may do it by his Oath*; *Secondly*, That no man ſhall obtain *Charters out of Parliament*, Stat. 4. *Edw.* 3. *cap* 13. And accordingly in a Parliament Roll it is ſaid, [for the Peace of the Land it would much help, if good Juſtices were appointed in every County, if ſuch as be let to mainprize do put in good Sureties, as Eſquires or Gentlemen: And that *no pardon were granted but by Parliament*]

Thirdly

Thirdly, For that the King hath granted Pardons of Felonies upon *falſe Suggeſtions*, it is provided, that every Charter of Felony which ſhall be granted at the Suggeſtion of any, the name of him that maketh the Suggeſtion ſhall be compriſed in the Charter, and if the Suggeſtion be found untrue, the Charter ſhall be diſallowed. And the like proviſion is made by the Statute of 5. *H.* 4. Cap 2. for the Pardon of an Approver.

Fourthly, It is provided that no Charter of Pardon for Murder, Treaſon, or Rape, ſhall be allowed, *&c.* If they be not ſpecified in the ſame Charter. Statute 13. *R.* 2. Before this Statute of 13. *R.* 2. by the Pardon of *all Felonies*, Treaſon was Pardoned, and ſo was *Murder*, *&c.* At this day by the Pardon of all Felonies, the death of man is not Pardoned. Theſe be excellent Laws for direction, and for the *Peace* of the Realm. But it hath been conceived, (which we will not queſtion) that the King may diſpence with theſe Laws by a *Non Obſtante*, [notwithſtanding,] be it General or Special (albeit we find not any ſuch Clauſes of *non Obſtante*, notwithſtanding, to diſpenſe with any of theſe Statutes, *(but of late times)* Theſe Statutes are excellent Inſtructions for a *Religious and Prudent King* to follow, for in theſe Caſes, *Ut ſummæ poteſtatis Regiæ eſt poſſe quantum velit, ſic Magnitudinis eſt velle quantum poſſit*, [As it is the higheſt Kingly power to be able to Act what he Wills, ſo it is his Greatneſs and Nobleneſs to Will only what he lawfully can.] Hereof you may Read more in Juſtice *Standford*, Lib. 2. Cap. 35. in diverſe places of that Chapter, of his grave Advice in that behalf. Moſt certain it is, that the *Word of God* has ſet down this undiſputable General Rule, *Quia non profetur Cito Contra malos ſententia, filii hominum ſine timore ullo perpetrant*, [becauſe Sentence againſt evil men is not ſpeedily Executed, therefore the hearts of the Children of men

are

are set in them to do evil] And thereupon the Rule of Law is grounded. *Spes Impunitatis Continuum Affectum tribuit delinquendi*, [the hope of Impunity encourageth Offenders] *Et veniæ facilitas Incentivum est Delinquendi*, and the facility of obtaining Pardon is an Incentive to Commit Offences] This is to be Added, that the Intention of the said Act of 13. *R.* 2. Was not that the King should grant a *Pardon of Murder by expreſs Name* in the Charter, but becauſe the whole Parliament conceived, that he *would never Pardon Murder by ſpecial Name* for the Cauſes aforeſaid, therefore that proviſion made, which was (as in other Caſes I have obſerved) grounded upon the Law of God, *Quicunque effuderit humanum ſanguinem, fundetur ſanguis illius; ad imaginem quippe Dei creatus eſt homo nec aliter Expiati poteſt, niſi per ejus ſanguinem, qui alterius ſanguinem effuderit*, [whoſoever ſhall ſhed mans blood, by man alſo ſhall his blood be ſhed, becauſe man was Created after the Image of God, neither can it be expiated otherwiſe then by his blood, who ſpilt the blood of another.] And the words of every Pardon is after the Recital of the offence, *nos pietate moti*, &c. we being *moved with Piety*, &c. But it can be no Piety to violate an expreſs Law of God, by letting Murder ſcape unpuniſht. Thus *Coke*, whereby we ſee what opinion he had of ſuch *Pardons*.

A brief digreſſion concerning the Nature of APPEALS.

THis Diſcourſe of *Pardons* puts us in mind of another kind of Legal Proſecution called an *Appeal*: of which it may be very convenient to give the Reader ſome brief account. You muſt know then for ſeveral Offences, for which a man deſerveth death, and particularly for *Murder*, there are *two ways* to bring him to Anſwer for the ſame, one by *Indictment*, which is *at the Kings Suit*, and the other by *Appeal*, which is *at the Suit of a Party* which is wronged or injured by the Murder: as a *Woman* whoſe Husband, or a *Child*, or *Brother*, whoſe Father or Brother is Killed.

Now upon an Indictment, if the Offender be found *Guilty*, becauſe its to be at the Suit of the King, it has been ſaid by ſome, may be and *too often a Pardon*, has been obtained (tho even *That* too be *againſt Law*, as appears by the Premiſſes) But in an *Appeal* all agree, the King can grant *no Pardon*, Nay if a perſon be tryed by Indictment, and Acquitted, or Convicted and get a *Pardon*, yet an Appeal may be brought, and if he be thereupon Convicted, notwithſtanding ſuch his former Acquital, or *Pardon*, he muſt be *Hanged*.

The word Appeal is derived from the *French* Verb *Appeller*, to Call, becauſe he or ſhe that brings it, Calls the Defendant to Judgment; but the meaning thereof is all one with *An Accuſation*, And is peculiarly in Legal ſignification applyed to Appeals of *Three ſorts*; Firſt an *Appeal* brought by an Heir Male for ſome wrong done to his *Anceſtor* whoſe Heir he is. Secondly, Of wrong done to an Huſband, and is by the Wife only, if it be for the death of her Husband, to be Proſecuted. The third is of wrong

Treason during the Life of his present Majesty,

1. Within or without the Realm to compass or intend the Death, Destruction, Maim, Wounding Imprisonment or Restraint of the King.

2. Or to deprive or *depose* him, or *Levy War* against him, within the Realm or without, to stir up Forreigners to *invade* the Realm.

If such Compassings or Intentions be expressed, uttered or declared by any *Printing, Writing, Preaching*, or malitious and advised *speaking*.

Being legally Convicted thereof upon the Oaths of *two lawful* and CREDIBLE Witnesses: [By which words, the Statute seems to injoin and require some *more than Ordinary* Scrutiny into the Credit of the Witnesses, for otherwise *Legal* had been enough, (and so is every man not Convict of *Perjury*) but Witnesses in this Case must not be only *Legal* but *Credible*, not infamous, scandalous, or suspected]

As to the second, Maliciously and advisedly to publish or affirm during his present Majesties Life, that the King is an--*Heretick*--or--a Papist--or that he *endeavours to introduce Popery*.

Or maliciously and advisedly by Writing Printing, Preaching, or speaking to utter, express or declare any Words, Sentences or thing, to stir up the people to *hatred or dislike of the Person of His Majesty* or the establisht Government.

Whoever is legally Convicted of any of these Crimes shall be disabled to hold any *place, Office, or promotion*, Ecclesiastical, Civil or Military. And besides be liable to such punishments as by the Common Laws or Statutes may be inflicted.

As to the third, to declare, publish, or affirm, first, that the *Old long Parliament* of 40 is not *dissolved*, or ought to be in being. Secondly, That there lies any obligation on ones-self, or any other person from any *Oath*, Covenant, or Engagement, to endeavour a change of Government either in Church or State.

Thirdly

Thirdly, that *either or both Houses* of Parliament have a Legislative power without the King, or any other words to the same effect.

The person so offending shall incur the penalty of a *Premunire*, which by the Statute of 16 *Rich.* 2 *Cap.* 5. here referr'd unto, is this, *viz.* To be put out of the Kings *Protection*, their Lands and Tenements, goods and Chattels, *Forfeited* to the King, and their bodies to be seized, &c. But in this Act of the 13 *Caroli*, there are these Proviso's.

1. As for the *two last Sorts* of Offences that are not Treason, none shall be prosecuted but by *order of the King*, under his Sign Manual, or of the privy Council.

2. As for the crimes made *Treasons*, none shall be Indicted or Convicted unless they be *ACCUSED* by two Lawfull and *Credible* Witnesses, touching the Addition of the word *Credible* to Lawfull, (which is here again repeated) we have spoken before; But must here further observe,

1. That by these expres words, this Statute provides that no man shall be *Indicted*, [that is, have a Bill found against him] upon this Statute for Treason, unless he be *Accused*, [that is, unless the matter be sworn against him before the Grand Jury] by two not only Lawfull, but CREDIBLE Witnesses, for the words are not only, *he shall* not be *Convicted* [which is the work of the *Petty Jury*, or Jury of Life and Death, as 'tis commonly called,] But he shall not be *Indicted* [which is the busiues of the Grand Jury] And therefore Grand-Juries besides their *general and ordinary Right* and power by Law, have when any person is Indicted upon *this Statute*, a special right and direction from the *Act it self* to Examine and be well satisfied in the *Credibility* of the Witnesses; which if duly considered, would perhaps much mitigate the Clamours lately raised against some Juries for their Returning some Bills before them *Ignoramus*, though the matters therein were roundly

sworn

ſworn unto by *Legal*, but probably in their eſteem and Judgment, as they were upon their Oaths, not ſufficiently *Credible* Witneſſes; eſpecially when their *Stories* were no leſs *Incredible* than their perſons.

Secondly, Note that as a perſon cannot be Convicted or Indicted, ſo neither can he be ſo much as *Committed* for any Offence made Treaſon by this Act, by or upon the Oaths of any *ſingle Witneſs*, though there ſhould be never ſo much preſumption that more may come in againſt him before he be brought to Trial, for the words are——*Unleſs he be thereof accuſed by the Teſtimony and depoſition of Two Lawful and Credible Witneſſes, which Witneſſes at his Arraignment ſhall be brought before him face to face*, &c. So that 'tis evidently intended the original accuſation before the Juſtice or Magiſtrate that ſhall Commit the perſon muſt be by two ſuch Witneſſes, and that the ſame two Witneſſes (and not *others*, leaving them that firſt charged him out, though yet others no doubt may be *added* to them) muſt give Evidence to the Grand Jury, and at his Trial.

3. There is in this Act a *third proviſo*, that no perſon ſhall incur *any* the Penalties in this Act mentioned *unleſs*, 1. He be *Proſecuted*, [that is charged before a Magiſtrate, or Committed] within ſix Months after the Offence Committed. Secondly, and unleſs he be Indicted thereupon within three Months after ſuch Proſecution. So that if in either of theſe Reſpects the time be elapſed, the Grand Jury ought not to find the Bill.

4. Provided, this Act ſhall not infringe the *Privileges* or Freedom of Debates in either of the Houſes of Parliament, or any Committee of them.

5. That a *Peer* ſhall be tryed for any Offence againſt this Act by his Peers, but if Convicted, ſhall be diſabled to ſit in Parliament during Life. And thus much for what is Treaſon at this day.

By the Statute of 1 and 2 *Phil.* and *Mar. cap* 10.

All

All Trials for Treaſon ſhall be only according to the Courſe of the Common Law. And though the greater part of that Statute, being Temporary, be expired, yet this Clauſe is ſtill in Force.

The Judgment in all Caſes of High Treaſon, except for Counterfeiting Coin (for a man) is, *That he ſhall be drawn on an Hurdle or Sledge to the place of Execution and there be Hanged by the Neck, to be cut down being yet alive, his Privy Members cut off, his Bowels ript up, taken out, and burnt before his face, his Head ſevered from his Body, his Body divided into four Quarters, which are to be diſpoſed of as the King ſhall order*——But for Counterfeiting Coin, only *Drawn and Hanged.* And in both Caſes for a Woman (for Modeſty ſake) it is only that ſhe ſhall be *Burnt.*

The reaſons or ſignification of this horrid Judgment on a man for *Treaſon*, are thus by ſome rendred and Interpreted.

1. He is drawn on a *Sledg* or *Hurdle* on the ground in the Dirt, to ſhew that his *Pride* is brought down, for Treaſon commonly ſprings from *Ambition.*

2. On this Hurdle he is drawn *backward*, to ſhew that his Actings have been contrary to Order, unnatural and *Prepoſterous.*

3. He is *Hanged* between Heaven and Earth, as *unworthy of either.*

4. He is cut down yet alive, and his *Privities cut off*, to ſhew that he was unfit to Propagate any *Poſterity.*

5. His *Head* is ſevered from his Body, becauſe his miſchevious *Brain* contrived the Treaſon.

6. His Body is *divided*, to ſhew that all his Machinations and Devices are *torn to pieces*, and brought to nought; and into *four parts*, that they may be tacttered towards the four Quarters of the World.

Heading being part of the judgment in Treaſon, the King commonly to perſons of Quality Pardons

dons all the reſt, of the Sentence, and ſo they are only *Beheaded.* But if a perſon be Attainted of *Murder* or any other Felony, if he be Beheaded, 'tis no Execution of the Judgment, becauſe there the Judgment always is, that he *be Hanged till he be dead*, which cannot be altered. So that had Count *Coningſmark* lately been Convicted and Condemned for the Murder of Eſquire *Thynn*, all his *Guinies* or his *Friends* could not have preſerved him from the *Gallows*, unleſs they could have got an intire *Pardon.*

Any perſon being Indicted for Treaſon may *Challenge* [that is except againſt or refuſe] *Five and Thirty* Jurors, *peremptorily* [that is, for his pleaſure, or for reaſons beſt known to himſelf, and without aſſigning any Cauſe to the Court. But if he Challenge more, that is above three full Juries, he Forfeits his Goods, and Judgment of *Peinfort & dure*, [that is of being *preſſed* to Death] ſhall paſs upon him as one that refuſeth the Trial of the Law.

In Caſes of *Murder* and *Felony* a man cannot Challenge peremptorily above the number of Twenty; But with Cauſe he may except againſt more. And this is by the Stat. of 22. *H.* 8. *cap.* 14.

And certainly ſince the Law of *England*, which is a *Law of Mercy*, does in *Favour of Life*, not only order a man to be Tryed by a *Jury* of his Country and *Equals*, but alſo allows him to refuſe, and have Liberty of excepting againſt ſo many of thoſe as ſhall be *Impanelled* for that purpoſe; It cannot be ſuppoſed that the ſame Law ever intended that the Priſoner ſhould be denyed *a Copy of the Pannel* of his Jury, that ſo by the Information of his Friends or otherwiſe, he may know their *Qualities, Circumſtances* and *Inclinations*; for how elſe ſhall he know whom to *Challenge peremptorily*, and whom to *Challenge with Cauſe*; to allow a man ſuch Liberty of Challenge, and give him no opportunity of ſuch Inquiry

quiry, is but to *mock the Priſoner*, to whom poſſibly he whole Jury by *face and name* may be utter Strangers; and ſure the wiſdom of our Laws never thought every Priſoner ſo skilled in *Metopoſcopy*, that meerly by *looking* on a parcel of men he could tell which of them were *indifferent*, and which biaſſed againſt him.

Another Statute of King *Edward* the third.

Anno 2. *Edw.* 3. *cap.* 2.

In what Caſes only *Pardon* of Felony ſhall be granted, *&c.*

ITem, *Whereas Offendors have been greatly encouraged, becauſe the Charters of Pardon have been ſo* eaſily granted *in times paſt of Man-ſlaughters, Roberies, Felonies, and other Treſpaſſes againſt the Peace,* (2) *It is ordained and Enacted that ſuch Charters* ſhall not be granted, but only where the King may do it by his Oath, *that is to ſay, where a man ſlayeth another in his* own Defence, *or by* Miſfortune. (3) *And alſo they have been encouraged becauſe that the* Juſtices *of the Goal-Delivery, and of Oyer and Terminer*, have been procured by great men, *againſt the Form of the Statute made in the 27th year of the Reign of King* Edward, *Grandfather to our Lord the King that now is, wherein is Contained that Juſtices Aſſigned to take Aſſizes, if they be* Lay-Men, *ſhall make deliverance, and if the one be a Clerk, and the other a Lay-man, that the* Lay-Judge *with another of the Countrey aſſociate to him, ſhall deliver the Goals.* (4) *Wherefore it is Enacted, that Juſtices ſhall not be made againſt the Form of the ſaid Statute;* (5) *And that the Aſſizes, Attaints, and Certifications be taken before the Juſtices, commonly*

monly Assigned, which should be good men and Lawful, having knowledg of the Law, and none other, after the Form if another Statute made in the time of the said King Edward *the first. (6) And that the* Oyers and Terminers *shall not be granted, but before the Justices of the one Bench or the other, or the Justices Errants, and that great hurt, or horrible Trespasses, and of the Kings special Grace, after the Form of the Statute thereof ordained in time of the said Grandfather, and none otherwise.*

The Comment.

Touching this Statute and several others to the same purpose, as 14. *Edw.* 3. *cap.* 14. and 10. *Edw.* 3. *cap.* 2. and 13. *R.* 2. *cap.* 1. and 16. *R. cap.* 6. &c.

We shall only give you the words of *Cook* in the third part of his Instit. fo. 236.

What things the King *may pardon*, and in what manner, and what *he cannot pardon*, falleth now to be treated of.

IN case of death of man, Robberies and Felonies against the Peace, divers Acts of Parliament have *Restrained the power of granting Charters of pardons*; first, that no such Charters shall be granted, but in case *where the King may do it by his Oath*; *Secondly*, That no man shall obtain *Charters out of Parliament*, Stat. 4. *Edw.* 3. *cap* 13. And accordingly in a Parliament Roll it is said, [for the Peace of the Land it would much help, if good Justices were appointed in every County, if such as be let to mainprize do put in good Sureties, as Esquires or Gentlemen: And that *no pardon were granted but by Parliament*]

Thirdly

Thirdly, For that the King hath granted Pardons of Felonies upon *falſe Suggeſtions*, it is provided, that every Charter of Felony which ſhall be granted at the Suggeſtion of any, the name of him that maketh the Suggeſtion ſhall be compriſed in the Charter, and if the Suggeſtion be found untrue, the Charter ſhall be diſallowed. And the like proviſion is made by the Statute of 5. *H.* 4. Cap 2. for the Pardon of an Approver.

Fourthly, It is provided that no Charter of Pardon for Murder, Treaſon, or Rape, ſhall be allowed, *&c.* If they be not ſpecified in the ſame Charter. Statute 13. *R.* 2. Before this Statute of 13. *R.* 2. by the Pardon of *all Felonies*, Treaſon was Pardoned, and ſo was *Murder*, *&c.* At this day by the Pardon of all Felonies, the death of man is not Pardoned. Theſe be excellent Laws for direction, and for the *Peace* of the Realm. But it hath been conceived, (which we will not queſtion) that the King may diſpence with theſe Laws by a *Non Obſtante*, [notwithſtanding,] be it General or Special (albeit we find not any ſuch Clauſes of *non Obſtante*, notwithſtanding, to diſpenſe with any of theſe Statutes, *(but of late times)* Theſe Statutes are excellent Inſtructions for a *Religious and Prudent King* to follow, for in theſe Caſes, *Ut ſummæ poteſtatis Regiæ eſt poſſe quantum velit, ſic Magnitudinis eſt velle quantum poſſit*, [As it is the higheſt Kingly power to be able to Act what he Wills, ſo it is his Greatneſs and Nobleneſs to Will only what he lawfully can.] Hereof you may Read more in Juſtice *Standford*, Lib. 2. Cap. 35. in diverſe places of that Chapter, of his grave Advice in that behalf. Moſt certain it is, that the *Word of God* has ſet down this undiſputable General Rule, *Quia non profetur Cito Contra malos ſententia, filii hominum ſine timore ullo perpetrant*, [becauſe Sentence againſt evil men is not ſpeedily Executed, therefore the hearts of the Children of men

are

are set in them to do evil] And thereupon the Rule of Law is grounded. *Spes Impunitatis Continuum Affectum tribuit delinquendi*, [the hope of Impunity encourageth Offenders] *Et veniæ facilitas Incentivum est Delinquendi*, and the facility of obtaining Pardon is an Incentive to Commit Offences] This is to be Added, that the Intention of the said Act of 13. *R.* 2. Was not that the King should grant a *Pardon of Murder by expreſs Name* in the Charter, but because the whole Parliament conceived, that he *would never Pardon Murder by special Name* for the Causes aforesaid, therefore that provision made, which was (as in other Cases I have observed) grounded upon the Law of God, *Quicunque effuderit humanum sanguinem, fundetur sanguis illius; ad imaginem quippe Dei creatus est homo nec aliter Expiati potest, nisi per ejus sanguinem, qui alterius sanguinem effuderit*, [whosoever shall shed mans blood, by man also shall his blood be shed, because man was Created after the Image of God, neither can it be expiated otherwise then by his blood, who spilt the blood of another.] And the words of every Pardon is after the Recital of the offence, *nos pietate moti*, &c. we being *moved with Piety*, &c. But it can be no Piety to violate an expreſs Law of God, by letting Murder scape unpunisht. Thus *Coke*, whereby we see what opinion he had of such *Pardons*.

A brief digreſſion concerning the Nature of APPEALS.

THis Diſcourſe of *Pardons* puts us in mind of another kind of Legal Proſecution called an *Appeal*: of which it may be very convenient to give the Reader ſome brief account. You muſt know then for ſeveral Offences, for which a man deſerveth death, and particularly for *Murder*, there are *two ways* to bring him to Anſwer for the ſame, one by *Indictment*, which is *at the Kings Suit*, and the other by *Appeal*, which is *at the Suit of a Party* which is wronged or injured by the Murder: as a *Woman* whoſe Husband, or a *Child*, or *Brother*, whoſe Father or Brother is Killed.

Now upon an Indictment, if the Offender be found *Guilty*, becauſe its to be at the Suit of the King, it has been ſaid by ſome, may be and *too often a Pardon*, has been obtained (tho even *That* too be *againſt Law*, as appears by the Premiſſes) But in an *Appeal* all agree, the King can grant *no Pardon*, Nay if a perſon be tryed by Indictment, and Acquitted, or Convicted and get a *Pardon*, yet an Appeal may be brought, and if he be thereupon Convicted, notwithſtanding ſuch his former Acquital, or *Pardon*, he muſt be *Hanged*.

The word Appeal is derived from the *French* Verb *Appeller*, to Call, becauſe he or ſhe that brings it, Calls the Defendant to Judgment; but the meaning thereof is all one with *An Accuſation*, And is peculiarly in Legal ſignification applyed to Appeals of *Three ſorts*; Firſt an *Appeal* brought by an Heir Male for ſome wrong done to his *Anceſtor* whoſe Heir he is. Secondly, Of wrong done to an Husband, and is by the Wife only, if it be for the death of her Husband, to be Proſecuted. The third is of

wrong

wrongs done to the Appellants themſelves as for Robbery, Rape, or Maim *Coke* 1. *Inſtit.* Sect. 500.

Note that this Appeal muſt be brought *within a year and a day* after the Murder is committed. For afterwards it cannot be brought at all. And antiently it was cuſtomary not to bring an Indictment for the King, till after the year and the day, waiting in the mean time for the Proſecution of the Party, but this was found very inconvenient, for the Party was frequently compounded with, and at the years end the buſineſs was forgot, and ſo Offenders eſcaped Juſtice.

And therefore the ſame was altered by the Statute 3 *Hen.* 7. *Cap.* 1. Whereby it is Enacted, "That the "Coroner ſhall do his Office, and the Offenders may be "Arraigned at any time within the year, at the Kings "Suit, but if Acquitted, yet the party within the year "and day ſhould have liberty to bring an Appeal "againſt ſuch perſon, either Acquitted or Attainted, "if the benefit of the Clergy be not before thereof had. "And in order thereunto that when any perſon happened to be Acquitted for the death of a man, within the "year, the Juſtices before whom he is Acquitted, ſhall "not ſuffer him to go at large, but either to remit him "again to the Priſon, or elſe to let him to Bail after "their diſcretion, till that the day and the year be "paſſed, that ſo he may be forth coming to Anſwer an "Appeal, if it ſhall happen to be brought.

Thus that Statute; as to the *latter Clauſe* whereof, you ſee the Judges have power in *Caſe of Acquittal* to keep the Party in Priſon ſtill, till the *day and year* be over. Or elſe to admit him to Bail; and tho this be left to their *Diſcretion*, yet it muſt not be ſuch a Diſcretion, as *confounds all Diſcretion*: but they muſt weigh the Circumſtances, and go according to Law and Judgment; and certainly the law intended ſuch Bail, if any be accepted, ſhould be bound *Body*

for

for Body, for otherwiſe it ſeems no ſecurity. And therefore many wiſe men wondered the other day when Count *Conning ſmark* was Acquitted on the Indictment for the Barbarous Murder of Eſquire *Thynn*, that he was ſuffered to go ſo ſoon abroad, for being a *Stranger*, he was never like to come again into *England*, and being ſo *rich*, what values he to diſcharge the Forfeitures of his Sureties Recognizances, which likewiſe may be eaſily Compounded. At moſt, the *Forfeiture is to the King*, and what is that to the next Heir or Kinſman? He is by this means *Outed* of his Legal Remedy to Revenge the Blood of his near and dear Relation——*Sed hæc Obiter.*

The form of an Appeal of Murder.

I C. Hic Inſtanter Appellat W. E. &c. (In Engliſh thus) **I here inſtantly Appeals** W. F. **of the death of his Brother** H. C. **For that whereas the aforeſaid** H. **was in the Peace of God and the King. at** Tonbridge **in the County of** Kent, **the twenty eighth day of** March, **in the thirty fourth year of the Reign of our Lord** Charles **the Second**, &c. **at ſeven a Clock in the Evening of the ſame Day, came the ſaid** W. F. **as a Felon of our Lord the King, in a premeditated**

meditated Assault, with Force and Arms, &c. And upon him the said H. C. then and there Feloniously an Assault did make, and with a certain Sword, of the price of twelve pence, which he then and there in his Right Hand did hold, the aforesaid H. upon his head did strike, and one mortal wound of two Inches long in forepart of his Head, even unto the Brain to the said H. did then and there feloniously give; of which said wound the said H. for three days then next following did languish, and then, viz. the [such a] day of [such a month,] he there died. [or if the case be so, Instantly died] And so the said W. H. as a felon of our Lord the King, the aforesaid H. Feloniously did kill and Murder, against the Peace of our said Lord the King, his Crown and Dignity: And that this he did wickedly, and as a Felon against the Peace of God, and our Lord the King the aforesaid offers that the same

me be detained as the Court of ur Lord the King ſhall think meet.

)iverſity of Courts and Juriſdicti-ns, VVritten in the time of King *I.n.* 8.

1. Note, That a woman cannot now bring an Ap-eal for the death of any other Anceſtors, being urred there from by *Magna Charta*, Cap. 34. where-(as you have heard) it is provided that none ſhall e taken or Impriſoned upon the Appeal of any wo-an for the death of any perſon, but only of *her husband*. But ſhe may at this day bring an Appeal f Robbery, *&c.* For therein ſhe is not by that tatute reſtrained. *Cook* 2d. Inſtit. fol. 68.

2. The woman that brings an Appeal for the eath of her Husband, muſt be his Wife, not only *e Facto* but *de Jure*, not only called and reputed, r cohabiting with him, but actually and legally Mar-ied to him; and of ſuch a Wife the Antient Law-Books ſpeaks, *de morte viri Inter Brachia ſua Inter-ecti*, the Husband is killed within her Arms, that is, whilſt he was legally in her poſſeſſion; but that the Appellant and the perſon killed, were not ever lawful-y coupled in Matrimouy, is a good Plea in an Appeal.

3. This right of Appeal for the death of her Hus-band is annexed to her Widdow-hood, as her *Quaentine* is, and therefore if the Wife of the Dead Marry again, her Appeal is gone, even although the econd Husband ſhould die within the year & day after he Murder of the firſt: For ſhe muſt all the while be-ore the Appeal be brought, continue *Fœmini viri ui*, his Widdow upon whoſe death the Appeal is rought: furthermore if ſhe bring the Appeal du-ing her Widdow-hood, and take a Husband whilſt is depending, the Appeal ſhall *Abate* (that is be

out

out of doors) for ever, Nay, if on her Appeal ſhe hath Judgment againſt the Defendant, if afterward ſhe take an Husband before the Defendant be Hanged, ſhe can never have Execution of death againſt him.

4. By the Statute of *Gloceſt.* made in the ſixth year of King *Edw.* 1. *Cap.* 9. It is Enacted that if an Appeal ſet forth the Deed, the year, the day, the hour, the Reign of the King, and the Town where the Deed was done, and with what Weapon the Party was ſlain, the Appeal ſhall ſtand in effect, and ſhall not be abated for default of freſh Suit, if the party ſhall Sue within the year and the day after the Deed done.

5. As for *the year and day* here mentioned, it is to be accounted for the whole year according to the Calendar, and not for twelve Months, at twenty eight days to the Month. So likewiſe the day intended is a Natural day. And this year and day muſt be accounted *after* the Felony and Murder Committed. Now if a man be Mortally Wounded on the firſt day of *May*, and thereof Languiſhes to the firſt day of *June*, and then dies; the Queſtion here ariſes whether the year and the day allowed for bringing the Appeal is to be reckoned from the giving the Wound, or the time of Death. Some have held the former: For that the Death enſuing, hath Relation to it; and that is the Cauſe of the Death, and the Offender did nothing the day of the Death. But the truth is, the year and day ſhall be accounted only from the firſt of *June*, the day of the Death; for before that time no Felony was Committed: and thus it hath often been reſolved and Adjudged, and the reaſon aboveſaid grounded upon Relation (which is a Fiction in Law) holdeth not in this Caſe. *Coke* 2. *Inſtit.* fol. 320.

6. I

6. If an Appeal of Murder be brought, and depending the Suit, and after the Year and Day is elapsed, one become accessary to the Murder, the Plaintiff shall have an Appeal against him after the Year and Day past after the Death, but it must be brought within the Year and Day after this new Felony as accessary.

7. If a Man be Indicted for Murder and Convicted only of Man-slaughter, and have the Benefit of his Clergy it seems the Wife and Heir cannot afterwards bring their Appeal. Touching which the Lord *Cook* 3 Instit. *Fo.* 131. cites a Case in these words: Thomas Burghe, *Brother and Heir of* Henry Burghe *brought an* Appeal of Murder *against* Thomas Holcroft, *of the Death of the said* Henry: *The Defendant pleaded, that before the Coroner, he was Indicted of Man-slaughter, and before Commissioners of Oyer and Terminer, he was upon that* Indictment Arraigned, *and confessed the Indictment, and prayed his* Clergy, *and thereupon was Entred* Curia advisare vult, *the Court will consider; whereupon he demanded Judgment, whether the Plaintiffe ought to maintain that Appeal he had brought. To which the Plaintiffe demurred in Law. And in this Case three points were adjudged by Sir* Christopher Wray, *Sir* Thomas Gawdy *and the whole Court.*

First, That the matter of the Bar *had been a good Bar of the Appeal by the Common Law, as well as if* the Clergy had been Allowed: *For that the Defendant, upon his Confession of the Indictment had prayed his Clergy, which the Court ought to have granted, and the deferring of the Court to be advised, ought not to prejudice the Party Defendant, albeit the Appeal was Commenced before the Allowance of it.*

The second point *adjudged was, that this Case was out of the Statute of* 3 Hen. 7. *For that the words of that Act are,*

If it fortune that the ſame Felons and Murderer and Acceſſaries ſo Arraigned, or any of them, to be Acquitted, or the Principal of the ſaid Felony, or any of them to be Attainted, the Wife or next Heir of him ſo ſlain, *&c.* may have their Appeal of the ſame Death and Murder againſt the Perſon ſo Acquitted, or againſt the ſaid Principals ſo Attainted, if they be alive, and that THE BENEFIT OF HIS CLERGY THEREOF before be not had.

And in this the Defendant Holcroft, *was neither* Acquitted *nor* Attainted, *but Convicted by Confeſſion, and the* Benefit of the Clergy only prayed, *as is aforeſaid, ſo as the Statute being penal concerning the Life of Man, and made in Reſtraint of the Common Law, was not to be taken by Equity, but is* Caſus Omiſſus, *a Caſe Omitted, and left to the Common Law.*

As to the Third, is was objected, that every Plea ought to have an apt Concluſion, and that the Concluſion in this Caſe ought to have been, Et petit judicium ſi prædiit *Thomas Holcroft* Iterum de eadem morte, de qua ſemel Convictus fuit, Reſpondere compelli debeat. *And he does ask judgment if the above mentione* Thomas Holcroft *ſhall be obliged to anſwer againe for the* ſame death, *he was once Convicted of*] *But it was adjudged that either of both Concluſions was* ſufficient *in Law: And therefore that exception was diſallowed by the Rule of the Court.*

Note, the ancient Law was, that when a Man had judgment to be hanged in an Appeal of Death, that *the Wife, and all the Blood of the Party ſlain ſhould draw the Defendant to Execution*, and *Gaſcoigne* ſaid, *Iſſint fuit in diebus noſtris*, ſo it was done in our Days.

And thus much occaſionally about *Appeals*, which we the rather inſerted becauſe the practice thereof (through I know not whoſe negligence) has been almoſt *loſt* or *forgot*; till ſome few Years ago a Woman

man in *Southwark* revived it againſt one that killed her Husband and got a pardon for it, but ſhe Proſecuted him on Appeal, had judgment againſt him, and he was Executed, ſince which time the ſame Courſe has been frequently talkt of, and brought, but for the moſt part (to the ſhame I think of thoſe Women or Children who make *ſuch Compoſitions* for their Husbands or Fathers Blood) they have been by ſome *ſecret Bargains* or Compenſations *huſht* up, and ſeldom effectually followed.

Two other Statutes of King *Edw.* 3.

Anno 4. Edw. 3. *cap.* 14.

A Parliament ſhall be holden once every year.

ITem, **It is accorded that a Parliament ſhall be holden** every year once, **and more often, if need be.**

Anno 36. Edw. 3. *cap.* 10.

A Parliament ſhall be holden once in the year.

ITem, **for maintenance of the ſaid Articles and Statutes, and Redreſs of divers** MISCHIEFS **and** GRIEVANCES, **which daily happen, a Parliament ſhall be holden every year, as another time was ordained by Statute.**

The Comment.

BEfore the *Conqueſt* (as the Victory of Duke *William* of *Normandy* over *Harold* the Uſurper, is commonly, though very improperly called)

Parliaments were to be held twice every year, as appears by the Laws of King *Edgar*, cap. 5. and the Teſtimony of the *Mirrour of Juſtices*, cap. 1. ſect. 3. For the Eſtates of the Realm. King *Alfred* cauſed the *Committees* (ſome *Engliſh* Tranſlations of that ancient Book read, *Earls*, but the word ſeems rather to ſignifie *Commiſſioners*, *Truſtees*, or *Repreſentatives*) to meet, and ordained for a PERPETUAL USAGE, that *twice in the year, or oftner, if need were, in time of Peace they ſhould Aſſemble at* London, *to ſpeak their Minds for the guiding of the People of God, how they ſhould keep themſelves from Offences, live in quiet and have right done them by certain Uſages and ſound Judgments.* King *Edward* the firſt (ſays *Cook*, 4. *Inſtit. fol.* 97.) kept a Parliament once every two years for the moſt part: And now in this King *Edward* the Thirds time (one of the *wiſeſt and moſt glorious* of all our Kings) It was thought fit to Enact by theſe two ſeveral Statutes, That a Parliament ſhould be held once at leaſt every year, which two Statutes are to this day *in full Force:* For they are *not Repealed*, but rather Confirmed by the Statute made in the 16*th* of our preſent Soveraign, King *Charles* the Second, *Cap.* 1. Intituled, *An Act for the Aſſembling and holding of Parliaments once in three years at the leaſt:* The words of which are as follow.

Becauſe by the ancient Laws and Statutes of this Realm, made in the Reign of King Edward *the third, Parliaments are to be held very often, your Majeſties Humble and Loyal Subjects, the Lords Spiritual and Temporal, and the Commons in this preſent Parliament Aſſembled, moſt Humbly do beſeech your moſt Excellent Majeſty, that it may be declared and Enacted,* (2) *And be it declared and Enacted by the Authority aforeſaid, that hereafter the ſitting and holding of Parliaments ſhall not be intermitted or diſcontinued above Three Years at the*

the most; but that within three years from and after the Determination of this present Parliament, so from time to time within three years after the Determination of any other Parliament or Parliaments, or if there be occasion, more or oftner, Your Majesty, your Heirs and Successors, do Issue out your Writs for calling, Assembling and holding of another Parliament, to the end there may be a frequent calling, Assembling and holding of Parliaments once in three years at the least.

Agreeable to these good and wholsome Laws are those gracious Expressions and Promises in His Majesties Proclamation touching the Causes and Reasons of Dissolving the two last Parliaments, Dated April 8. 1681. *Irregularities in Parliament shall* NEVER *make us out of love with Parliaments, which we look upon as the best Method for healing the distempers of the Kingdom, and the only means to preserve the Monarchy in that due Credit and Respect which it ought to have both at home and abroad. And for this Cause we are resolved by the blessing of God to have frequent Parliaments; And both in and out of Parliament to use* OUR UTMOST ENDEAVOURS TO EXTIRPATE POPERY, *and to Redress all the Grievances of our good Subjects, and in all things to Govern according to the Laws of the Kingdom.*

A DIGRESSION touching the Antiquity, Use, and Power of PARLIAMENTS, and the Qualification of such Gentlemen as are fit to be chosen the Peoples Representatives.

THe Recital of these several Laws for frequent calling of Parliaments, declaring the same to be of such Importance or Necessity to the safety and wel-be-

ing of the Nation, Invites us to give the vulgar Reader ſome further Information touching thoſe moſt Honourable Aſſemblies, which though a digreſſion will I hope be no Tranſgreſſion, for I am willing at any time to go a little out of my way, provided I may thereby meet with the Readers profit and Advantage.

Of the Names and Antiquity of Parliaments.

THe word PARLIAMENT is *French*, derived from the three words *Parler la ment*, to ſpeak ones mind, becauſe every Member of that Court ſhould ſincerely and diſcreetly ſpeak his mind for the general good of the Common-Wealth, and this name (ſaith *Cook* 1 *Inſtit.* fo. 110.) was uſed before *William* the Conquerer, even in the time of *Edward* the Confeſſor. But moſt commonly in the *Saxons* time, it was called *Michelgemote* or *Witenage Mote*, that is, the *Great Mote* [*Meeting* or *Aſſembly*, whence our *Ward-Mootes* in *London* receive their name to this day] or the *Wiſe-Moote*, that is, the Aſſembly of the wiſe men and Sages of the Land.

But this word Parliament is uſed in a double ſenſe.

1. *Strictly*, as it includes the *Legiſlative* Power of *England*, as when we ſay— *An Act of Parliament*; and in this Acceptation, it neceſſarily includes the King, the Lords, and the Commons, each of which have a *Negative Voice* in making Laws, and without their *joint Conſent* no new Laws can paſs, that be obligatory to the Subject.

2. Vulgarly, the word is uſed for the *Two Houſes*, the Lords and Commons, as when we ſay, the King will *call a Parliament*, his Majeſty has *Diſſolved his Parliament*, &c.

The Lords of Parliament are divided into two ſorts, *viz. Spiritual*, that is to ſay the Biſhops (who ſit there in reſpect of their *Baronies*) parcel of their Biſhopricks

Biſhopricks which they hold in their Politick Capacity, and *Temporal.*

The Commons are likewiſe divided into three *Claſſes* or parts, *viz*, *Knights or Repreſentatives of the Shires* or Counties; where note, that though the Writ require two *Knights* to be choſen, and that they are called *Knights*, yet there is no neceſſity that they ſhould actually have the degree of Knighthood, provided they be but Gentlemen; for the Statute 23 *Hen. 6. cap:* 15: hath theſe words, *That the Knights of the Shires for the Parliament hereafter to be choſen, ſhall be notable Knights of the ſame Counties for which they ſhall be choſen,* OR OTHERWISE *ſuch Notable Eſquires or Gentlemen born of the ſame Counties, as ſhall be able to be Knights, and no man to be ſuch Knight which ſtandeth in the degree of a Yeoman and under.*

Secondly, *Citizens* choſen to Repreſent Cities.

Thirdly, Burgeſſes, that is to ſay, thoſe that are choſen out of Boroughs.

Note, that the difference between a *City* and a *Borough* is this, a City is a Borough Incorporate, which is or has within time of Memory been an *Epiſcopal See*, or had a Biſhop; and this (altho the Biſhoprick be Diſſolved, as *Weſtminſter* having heretofore a Biſhop, though none now) ſtill remains a City. *Cook* 1. *Inſtit.* Sect. 164. Boroughs are Towns Incorporated, but ſuch as never had any Biſhops.

Of the *Three Eſtates in* Parliament.

THere has been a great debate about *the Three Eſtates*, ſome zealouſly pleading, That the *Biſhops* are one of the three Eſtates of the Realm, and the Lords Temporal a Second, and the Commons-houſe the Third, and the King over all as a Tranſcendent by himſelf. Others as ſtifly deny this, and aſſign

the King (as he his the Head of the CommonWealth) to be the *first Estate*, *the Lords*, as well Spiritual as Temporal jointly, to be the *Second*; and the *Commons-House* the Third.

Non opis est nostræ tantas Componere Lites.

We shall not presume to undertake a decision of this arduous Controversy, but in our poor opinion the matter seems to appear more difficult than really it is, by means that the contending Parties do not first plainly set down what it is they severally mean by the word *Estate*. Which may be taken, 1. For a *rank*, *degree*, or Condition of Persons considered by themselves, different in some notable Respects from others wherewith they may be compared. And in this respect *my Lords the Bishops* may very properly be said to be an *Estate*, or one of the Estates of the Realm, for then there will be several *Estates*, above the number of *three*, for so in the House of Commons there may be said to be three Estates, *viz.* *Knights*, *Citizens* and *Burgesses*. And heretofore in the days of Popery, when there were 26 Abbots and Priors, that held *per Baroniam* too, as well as the Bishops, called to the Parliament, and sat in the Lords House, [see *Fullers* Church History, *Lib.* 6. 292.] Whether they being *Religious* and Monastical Persons, whereas the Bishops were *Seculars* (no small difference in their account) might not as well claim to be a *distinct Estate* by themselves, as now the Bishops do, may be a question.

But secondly, When we spake of three Estates in the Constitution of our *English* Government, 'tis most natural to mean and intend *such a poize in the Ballance*, or such an *Order* or *State*, as hath a *Negative Voice* in the *Legislative* Power: For as the *King* and *Commons* excluding the *Lords*, so neither the King and Lords excluding the Commons; much less the Lords and Commons excluding the *King*, can make any Law; but this glorious *Triplicity* must be in

in mutual Conjunction, and then from their united Influences spring our happy Laws. But in this sence the Lords Spiritual by themselves have no pretence to be a *distinct Estate*: That is, they have by themselves no *Negative Voice*, (which I conceive the proper Characteristick or *essential Mark* of each of the three *Estates*;) For suppose a *Bill* pass the Commons, and being brought into the Lords House, all the 26 Bishops should be against it, and some of the *Temporal Lords*, yet if the other Temporal Lords be more in number than the Bishops, and those that side with them, the Bill shall pass as the Act of the *whole house*; and if his Majesty please to give it his *Royal Assent*, is undoubted Law. Which demonstrates the Bishops have of themselves *no Negative* Voice, and consequently are none of the three Estates of the Realm. But if any will have them called *an Estate* and mean something else by it, if he please to explain his Notion, 'tis like I shall not contend with him about a fiddle faddle word.

Touching the Power *of the Parliament.*

THe Jurisdiction of this Court (saith *Cook*, 1 *Instit. Sect.* 164.) is so Transcendent that it maketh, Inlargeth, Diminisheth, Abrogateth, Repealeth, and reviveth Laws, Statutes, Acts and Ordinances concerning matters Ecclesiastical, Civil, Martial, Marine, Capital, Criminal and common. And 4 *Instit. Fol.* 36. The Power and Jurisdiction of the Parliament for making of Laws, in proceeding by Bill, is so transcendent and absolute as it cannot be confined either for *Causes* or *Persons* within any bounds. Of this Court it is truely said — *Si Antiquitatem spectes est vetustissima, si Dignitatem, est Honoratissima, si Jurisdictionem, est capacissima*; if you regard its Original, it is most Antient; if its Dignity, it is most Honourable; if its Jurisdiction, it is most Capacious.

Sir *Thomas Smith* a great Statesman, and in high esteem and place under Queen *Elizabeth*, in his Treatise, *de Republica Anglorum, Lib.* 2. *Ca.* 2. gives this Character of this supream Court—*In Comitiis Parliamentariis, posita est omnis Angustæ, absolutæque potestatis vis, veteres leges jubent esse irritas, novas inducunt; Presentibus juxta ac futuris modum constituunt; Jura & possessiones hominum privatorum commutant, Spurios natalibus restituunt, cultum divinum sanctionibus corroborant; Pondera & mensuras variant; JUS IN REGNO SUCCEDENDI PRESCRIBUNT,* &c. *The most high and absolute power of the Realm of* England, *consisteth in the Parliament; for the Parliament abrogateth old Laws, maketh new, giveth order for things past, and for things hereafter to be followed, changeth the rights and possessions of private men; Legitimateth Bastards, Corroborates Religion with Civil Sanctions, Alters weights and Measures; PRESCRIBES THE RIGHT OF SUCCESSION TO THE CROWN, defines doubtfull Rights where there is no Law already made, Appointeth Subsidies, Taxes and Impositions, giveth most Free pardons, restoreth in Blood and Name,* &c.

As for the power of Parliaments over both Statute and Common Law, take it in the Accurate and Significant words of a Parliament, *viz.* the Statute, of 25 *Hen.* 8. *Ca.* 21, as follows,—*Whereas this Realm Recognizing no superiour under God, but the King, hath been and is free from Subjection to any mans Laws but only to such as have been devised, made, and ordained within this Realm, for the wealth thereof, or to such other as the people of this Realm have taken at their free Liberty by their own consent to be used amongst them, and have bound themselves by long use and Custome to the observance of the same; not to the observance of the Laws of any Forreign Prince, Potentate or Prelate, but as to the accustomed and ancient*

Ancient Laws of this Realm, originally eſtabliſhed as Laws of the ſame by the ſaid Sufferance, Conſents and Cuſtom, and none otherwiſe. It ſtandeth therefore with natural Equity and good Reaſon, that all and every ſuch Laws Humane made within this Realm or induced into this Realm, by the ſaid Sufferance Conſents and Cuſtom, the King and the Lords Spiritual and Temporal and Commons Repreſenting the whole State *of the Realm, in the moſt High Court of Parliament, have full Power and Authority to diſpenſe with thoſe and all other Humane Laws of the Realm, and with every one of them, as the quality of the Perſons and matter ſhall require. And alſo the ſaid Laws and every of them to abrogate, annull, amplify or diminiſh, as to the King, Nobles, and Commons of the* Realm, *preſent in Parliament, ſhall ſeem moſt meet and convenient for the Wealth of the* Realm.

Thus far that notable *Statute*, which in truth is only *Declarative* and in Affirmance of the Ancient Common Law of *England*.

The particular Buſineſs of Parliaments.

BY what hath been ſaid, you may perceive the *work* of an *Engliſh* Parliament is not (as ſome would have it,) only to be *Keys* to unlock the peoples *Purſes*. That is but one part, and perhaps one, of the *leaſt* parts too, of their Office. They are to propoſe *new Laws* that are wanting for general good, and to preſs the *Abrogation* of Laws in being, when the Execution of them is found *prejudicial* or *dangerous* to the publick. They are to provide for Religion, and the Safety and Honour of the Nation, they have a power (as you have heard from Sir *Thomas Smith*,) to order the Right *to the Crown* (underſtand all this with the Kings conſent) and they have

have very frequently undertaken and actually *Limited* the same, contrary to and different from *the Common Line of Succession.* Nay by the Statute of the 13 *Eliz. Cap.* 13. It is expresly Enacted, *That if any Person shall in any wise hold and affirm or maintain, that the Queen with and by the Parliament of* England *is not able to make Laws and Statutes of sufficient force and validity to Limit and bind the Crown of this Realm, and the Descent, Limitation Inheritance and Government thereof, or that this present Statute, or any part thereof, or any* other Statute to be made *by the Authority of the Parliament of* England, *with the Royal Assent for Limiting the Crown, is not, are not, or shall not, or ought not to be for ever of good and sufficient Force and validity to bind, limit, restrain and Govern all Persons, their Rights and Titles, that in any wise may or might claim any Interest or Possibility in or to the Crown of* England, *in Possession Remainder, Inheritance, Succession or otherwise howsoever, and all other Persons whatsoever, every Person so holding affirming or maintaining during the Life of the Queen shall be adjudged an high Traitor, and suffer and forfeit as in Cases of High Treason is accustomed, and every Person so holding affirming or maintaining after the decease of our said Sovereign Lady shall forfeit all his Good and Chattels.*

Which Clause and last mentioned Penalty is to this Day in force, and ought to be considered by any who shall now pretend that an Act of Parliament cannot dispose of the Succession.

As for the Right of making *War* and *Peace* the same is granted to be part of the High *Prerogatives* of our Kings, yet the wisest of our Monarchs have very rarely entred into any War without the consent of Parliaments; for 1. Who could give them better

better Counsel in such a difficult Affair? 2. The People would more readily expose their Persons in such a *War*, the *Justice* and *Expediency* whereof was approved by their *Representatives*. 3. The King from thence might more certainly promise himself *supplies* of Money to carry on the same.

But nothing is more properly the work of a Parliament than to redress *Grievances*. To take notice of Monopolies and oppressions, to Curb the Exorbitances of pernicious *Favourites*, and *ill Ministers of State*. To punish such *mighty Delinquents* as look upon themselves too big for the ordinary reach of Justice, to inspect the Conduct of such as are intrusted with Administration of the Laws, or disposal of the publick *Treasure* of the Nation: All Crimes of these and the like kinds are *publick Nusances*, common mischiefs, and wound the *whole Body* politick in a vital part, and can scarce at all be found out or Redressed (by reason of the power and Influence of the Offenders) but in this *great and awful Senate*, before whom the haughtiest Criminals tremble; and it has been observed that they scarce ever Prosecuted any (though never so great, or highly in favour at Court) but sooner or later they hit him, and it proved his Ruine. Take a few examples. King *Edw.* the second dotes upon *Pierce Gaveston* (a *French* Gentleman) he wastes the Kings Treasures, has undeserv'd *Honours* conferred on him, affronts the antient Nobility. The Parliament in the beinning of the Kings Reign Complains of him, he is banisht into *Ireland*: The King afterwards calls him home, and marries him to the Earl of *Glocesters* Sister, the Lords complain again so effectually, that the King not only consents to his *second Banishment*, but that if ever he returned or were found in the Kingdom, he should be held and proceeded against as an Enemy

my to the State. Yet back he comes, and is received once more by the King as *an Angel*, who carries him with him into the North, and hearing the Lords were in Arms to bring the said *Gaveſton* to Juſtice, plants him for ſafety in *Scarborough* Caſtle, which being taken, his Head was *Chopt off*.

In King *Richard* the Seconds time, moſt of the Judges of *England* to gratifie certain *corrupt and pernicious Favourites* about the King, being ſent for to *Nottingham*, were by Perſwaſions and Menaces prevailed with to give falſe and *Illegal* Reſolutions to certain queſtions propoſed to them, declaring certain matters to be Treaſon which in truth were not ſo: For which in the next Parliament they were called to Account, and Attainted; and Sir *Robert Treſilian* Lord Chief Juſtice of *England*, was *drawn* from the *Tower* through *London* to *Tyburn*, and there Hanged: As likewiſe was *Blake* one of the Kings Council, and *Uske* the Under-Sheriff of *Middleſex*, who was to pack a Jury to ſerve the preſent *Turn*, againſt certain *Innocent Lords* and others, whom they intended to have had taken off; and five more of the Judges were *Baniſht*, and their Lands and Goods forfeited. And the Archbiſhop of *York*, the Duke of *Ireland* and the Earl of *Suffolk*, three of the Kings *Evil Councellors*, were forced to fly, and died miſerable Fugitives in Forreign Parts.

In the beginning of King *H.* the 8ths Reign, Sir *Richard Empſon* Knight, *Edmund Dudley* one of the Barons of the Exchequer, having by colour of an Act of Parliament to try People for ſeveral Offences *without Juries*, committed great oppreſſions, were proceeded againſt in Parliament and loſt their Heads.

In the 19 Year of the Reign of King *James* at a Parliament holden at *Weſtminſter* there were ſhewn (ſaith *Bakers Chron. Fo.* 418.) *two great Examples of Juſtice*; which for future Terrour, are not unfit

to

to be here related; one upon Sir *Giles Mompesson*, a Gentleman otherwise of Good parts, but for practising sundry *abuses* in erecting and seting up *new Inns* and *Ale-houses* and *exacting great Summes of Money* of people, by pretence of Letters *Patents* granted to him for that purpose, was sentenced to be *degraded* from his *Knighthood*, and disabled to Bear any Office in the Common-Wealth, though he avoided the Execution by Flying the Land; But upon Sir *Francis Mitchel*, a Justice of Peace of *Middlesex*, and one of the Chief Agents, the sentence of *Degradation* was Executed, and he made to ride *with his face to the Horse tail* through the City of *London*. The other Example was of Sir *Francis Bacon*, *Viscount St. Albans*, Lord Chancellour of *England*, who for *Bribery* was put from his place, and Committed to the Tower.

In King *Charles* the firsts time, most of the Judges that had given their opinions contrary to Law in the Case of *Ship-Monty*, were call'd to Account, and forced to *Fly* for the same: And in the 19th year of our present Sovereign, the Earl of *Clarendon*, Lord Chancellour of *England*, being questioned in Parliament and retiring thereupon beyond the Seas, was by a special Act *Banished* and *Disabled*. In a word it was well and wisely said of that excellent Statesman, Sir *William Cecil* Lord Burleigh, and High Treasurer of *England*, *That he knew not what an Act of Parliament might not doe*; which Apothegm was approved by King *James*, and alleadged (as I remember) in one of his published Speeches.

And as the *Jurisdiction* of this Court is so transcendent, so the Rules and *Methods* of Proceedings there, are different from those of other Courts. For (saith *Cook* 4. *Instit.* fo. 15.) *As every Court of Justice hath Laws and Customs for its Direction, some by the Common Law, some by the Civil and Canon Law, some by Peculiar Laws and Customs, &c. So the High*

Court of Parliament suis propriis Legibus & Consuetudinibus Subsistit, Subsists by it's own Peculiar Laws and Customs. *It is*, Lex & Consuetudo Parliamenti, the Law and Custom of Parliament, *that all weighty matters in any Parliament moved concerning the Peers, or Commons in Parliament assembled, ought to be determined, adjudged and discussed by the* Course of the Parliament, *and not by the Civil Law, nor yet by the* Common Laws *of this Realm used in more Inferiour Courts. Which was so declared to be* Secundum Legem & Consuetudinem Parliamenti, according to the Law and Custom of Parliament, *concerning the Peers of the Realm, by the King, and all the Lords Spiritual and Temporal, and the like* pari ratione (*for the same reason*) *is* for the Commons, *for any thing moved or done in the House of Commons: and the rather, for that by another Law and Custom of Parliament,* the King cannot take notice of any thing said or done in the House of Commons, but by the Report of the House of Commons; *and every Member of the Parliament hath a* Judicial *place, and can be no Witness. And this is the Reason that* Judges ought not *to give any opinion of a Matter of Parliament, because it is not to be decided by the Common Laws, but* Secundum Legem & Consuetudinem Parliamenti, according to the Law and Custom of Parliament: *And so the Judges in diverse Parliaments have confessed. And some hold, that every offence Committed in any Court punishable by that Court, must be punished* (*proceeding Criminally*) *in the same Court, or in some higher, and not any Inferiour Court, and the Court of Parliament hath no higher.* Thus *Cook.*

Great complaints have been made about a *late House* of Commons sending for some Persons into *Custody* by their Serjeant at Arms; but certainly they did no more therein, than what their *Predecessors* have often done; every Court must be supposed Armed with a power to defend it self from *Affronts and Insolencies*;

In

In all Ages when the House has appointed particular Committees, hath it not been usual to order that they shall be impower'd to *send for Papers, Persons, and Records?* But to bring Men to a *sober* Consideration of their Duty and *Danger*, I shall give a few Instances, besides those before mentioned, of what the House of Commons hath done in former Ages.

1. *Anno* 20. *Jacobi*, Doctor *Harris* Minister of *Blatchingly* in *Surry*, for misbehaving himself by *Preaching* and otherwise, about Election of Members of Parliament, upon complaint, was called to the *Bar* of the House of Commons, and there as a Delinquent *on his Knees*, had Judgment to confess his fault *there*, and in the *Countrey*, in the *Pulpit* of his Parish Church, on Sunday before Sermon.

2. *Anno* 21 *Jacobi*, *Ingrey* under Sheriff of *Cambridge-shire*, for refusing the *Poll* upon the promise of Sir *Thomas Steward* to defend him therein, kneeling at the Bar, received his Judgment to stand Committed to the Serjeant at Arms, and to make Submission at the Bar, and Acknowledge his offence there, and to make a *farther Submission* openly at the Quarter Sessions, and there also to acknowledge his fault.

3. *Anno* 20 *Jacobi*, the Mayor of *Arundel*, for misbehaving himself in an Election, by putting the Town to a great deal of Charge, not giving a due and General warning, but *Packing* a number of Electors, was sent for by Warrant, and after ordered to pay all the Charge, and the House appointed certain persons to adjust the Charges.

4. And 3 *Car.* 1. Sir *William Wray* and others, Deputy Lieutenants of *Cornwal*, for assuming to themselves a power to *make whom they pleas'd* Knights, and defaming those Gentlemen that then stood to be Chosen, sending up and down the Countrey *Letters* for the Trained Bands to appear at the Day of Election, and *Menacing* the Countrey under the

Title

Title of His *Majesties pleasure*; had Judgment given upon them, to be committed to the *Tower*. 2. To make Recognition of their Offence at the Bar of the House *upon their Knees*, which was done. 3. To make a Recognition and submission *at the Assizes* in *Cornwal*, in a Form drawn by a Committee.

5. But most remarkable are the Proceedings in the same Parliament *Anno* 1628. against Doctor *Manwaring*, who being there charged with *Preaching* and Publishing Offensive Sermons, and the same referred to a *Committee*; they brought in their Report, which was delivered to the House with this *Speech*, as I find it in Doctor *Fullers Church-History*, *L.* 11. Fo. 129.

Mr. *Speaker*,

I am to deliver from the Sub-Committee, a Charge against Mr. Manwaring, *a Preacher and Doctor of Divinity, but a Man* so Criminous, *that he hath turned his Titles into Accusations*; *for the* better *they are, the* worse *is he, that hath dishonoured them. Here is a great Charge that lies upon him, it is great in it self, and great because it hath many great Charges in it*: Serpens qui Serpentem Devorat, fit Draco; *his Charge having digested many Charges into it, is become a* Monster *of Charges. The main and great one is this*; a Plot *and Policy, to alter and subvert the* Frame and Fabrick *of this State and Commonwealth. This is the great one, and it hath others in it, that gains it more Greatness: For to this end, he labours to infuse into the Conscience of his Majesty the perswasion of* a Power not bounding it self with Laws, *which King* James *of famous memory, calls in his Speech in Parliament*, 1619. Tyranny, *yea*, Tyranny accompanied with Perjury.

2. *He endeavours to perswade the Consciences of the Subjects, That they are Bound to Obey* Illegal Commands, ; *yea, he* Damns *them for not Obeying them.*

3. *He*

3. *He Robs the Subjects of the* Property *of their Goods.*

4. *He* Brands *them that will not lose this Property with most Scandalous and Odious Titles, to make them* Hateful both to Prince and People, *so to set a Division between the Head and Members, and between the Members themselves.*

5. *To the same end (not much unlike to* Faux *and his Fellows) he seeks to Blow up* Parliaments and Parliamentary-Power. *These five being duly viewed, will appear to be so many Charges, and withal they make up the main and great Charge, a mischievous Plot to alter and subvert the Frame and Government of this State and Common-wealth. And now that you may be sure that Mr.* Manwaring, *though he leave us* no propriety *in our Goods, yet he hath an absolute propriety in his Charge*; Audite ipsam Belluam, *hear Mr.* Manwaring *by his own words making up his own Charge.*

Here he produced the Books, particularly Insisting on *p.* 19, 29, and 30. in the first Sermon, *p.* 35, 46, and 48. in the second Sermon; all which passages he heightened with much Eloquence and Acrimony; thus concluding his Speech, *I have shewed you an Evil tree that bringeth forth Evil fruit; and now it rests with you to determine, whether the following Sentence shall follow,* Cut it down, and cast it into the Fire.

Four days after the Parliament proceeded to his *Censure*, consisting of eight particulars, it being ordered by the House of Lords against him, as followeth.

1. To be *Imprisoned* during the pleasure of the House.

2. To be *Fined* a thousand Pounds.

3. To make his *Submission* at the Bar in this House, and in the House of *Commons*, at the Bar there, *in Verbis Conceptis*, a set form of words framed by a Committee of this house.

4. To

4. To be *Suspended* from his Ministerial Function three Years, and in the mean time a sufficient Preaching-man to be provided out of the profits of his Living, and this to be left to be performed by the Ecclesiastical Court.

5. To be Disabled for ever hereafter *from Preaching at Court.*

6. To be for ever Disabled of having any *Ecclesiastical Dignity* in the Church of *England.*

7. To be Uncapable of any *Secular* Office or Preferment.

8. That his Books are worthy to be *Burned*, and his Majesty to be moved, that it may be so in *London*, and both the *Universities.*

And accordingly he made his humble Submission at both the *Bars* in Parliament, on the Three and twentieth of *June* following, and on his Knees, before both Houses, submitted himself, with outward Expressions of Sorrow, as followeth.

I do here in all sorrow of Heart, and true Repentance, acknowledge those many Errors and Indiscretions which I have committed in Preaching and Publishing the two Sermons of mine, which I called Religion and Allegiance, and my great fault in falling upon this Theam again, and handling the same rashly, scandalously and undavisedly in my own Parish Church in St. Giles in the Fields, the Fourth of May *last past. I humbly acknowledge these three Sermons to have been full of Dangerous passages and Inferences, and scandalous Aspersions, in most part of them. And I do Humbly acknowledge the Just proceedings of this Honourable House against me, and the Just Sentence and Judgement pass'd upon me for my great Offence. And I do from the bottom of my Heart crave Pardon of God, the King, and this Honourable House, and the Common-Weal in general, and those worthy Persons Adjuged to be reflected upon by me in particular, for these great Offences and Errors.*

The

The truth is, 'tis this *High Court* of Parliament, that only can hinder the *Subject* from being given up as a Prey to the *Arbitrary Pleaſure* not only of the Prince if he ſhould attempt it, but (which is Ten times worſe) to the unreaſonable paſſions and luſts of *Favourites*, cheif Miniſters, and Women; when otherwiſe inſtead of a *Monarch* (who as ſometimes it may happen ſhall Govern but in name) we might be ruled like the Antient *French* by an inſolent *Major of the Pallace*, who will be ſure to mind the private intereſt of himſelf and Family more than that of the Prince or the *Publick good*: Or like the *Turkiſh* Empire under a *Weak Grand Seignior*, by the *Prevailing Concubine* of the *Seraglio*, who is perhaps her ſelf *managed* by no higher dictates than that of her *chief Eunuch* or *She-Slave*. It is ſtrange therefore to obſerve the *Impotent Ambition* of ſome Men (and ſuch as, with Shame let us ſpeak it, boaſt themſelves *Engliſh-men* too) who (provided they may trample upon and *domineer* over their Inferiors) care not how much their *Superiors* do the like over them. Their Souls (like moſt inſolent Mens) being mean enough to ſubmit thereunto; or who can enough deplore and abhor the ignorance and *ſtupidity* of ſome *lazy inſignificant Gentlemen*, who care not how things go, provided they may enjoy their *Hawks*, *Hounds*, and *Bowling-Green Meetings*; whilſt not only for *Divinity*, but *Politicks* too, they are Govern'd by their more *Impertinent Chaplain*, or the Parſon of their Pariſh. Now nothing is more obvious than the deſigns of ſome *idle*, *Covetous*, *Sycophant Clergy-men*, *who like* Ivy, though it cannot grow without the ſupport of the Oak and yet will deſtroy it at laſt, do in private Parlours over the Glaſs, whilſt Healths go round, as well as in their Pulpits over their Cuſhions, ſet up *Abſolute Monarchy* to be *Jure Divino*, declaiming againſt the unreaſonable ſtubornneſs of any Parliament that will not give away the Peoples *Money*, and ſubmit

mit themſelves to be *Fleec'd*, as often as the *prime Miniſter* or Favourite think fit, they cry up the Prince like an Angel ſo long as he will be their *Executioner* to Whip, Impriſon, or hang all that will not *truckle* to their own Pride and Avarice; or refuſe to give up their *Souls* once again to be managed by an *Implicite Faith*, whereby in the mean while theſe *Huffiſh Sir Johns* might not be troubled with thoſe uneaſy Tasks of *Studying*, *Preaching*, &c. but may have nothing elſe to do, but live at eaſe, keep their *Coach* and *Horſes*, with a *ſilly Curate* to do all the *Drudgery*; Whilſt they themſelves are making *Addreſſes* above, by Flattering and Informing at ſome great *Noblemans* or *Biſhops* Table, and *railing* againſt the *Whiggs* and *Fanaticks*, and ſpeaking a good word for *Popery by the By*; Or elſe if their parts reach ſo high, by ſome Sycophant Pamphlet or Sermon againſt the Government Eſtabliſht by Law; They teach that men have no property either in their Lives or Goods, but only during the Princes pleaſure, *&c.* If there be not ſuch a parcel of Things as theſe that call themſelves *Divines*, then *no Body* is concerned *in this Character*; *but if there be, they are the worſt of men*, and *ought not only* to be expoſed, but ſeverely puniſht.

Therefore ſince at preſent we live under ſo happy a Government, where being ſecurely Landed our ſelves, we behold the Shipwrack of our Neighbours, and ſince (notwithſtanding the goodneſs of our Sovereign King *Charles* the Second, *whom God preſerve*) who has declared that he deſires nothing leſs than the Alteration or ſubverſion of that Government (which as well by his *Coronation* Oath, as by his own Lenity and good nature, he thinks himſelf obliged to obſerve) yet there are ſome, who for their own private ends, endeavour their utmoſt to remove our antient *Land-marks*, Introducing Popery and Slavery amongſt us; It is therefore the indiſpenſable *Intereſt* and Duty of all

true

true *English-men* to maintain these Priviledges conveyed from their Ancestors through so many Generations inviolable, upon which all our (Earthly) and in a great measure our *Spiritual*) Happiness, safety, and well-being depends. Nor can any Man in his senses but acknowledge that the only *right way* to attain that end, is to look well to the *Means*, and that is by taking due care what Persons they Choose for their Representatives, with whom they must trust their Estates, Lives, and Liberties.

Now this Government of a Prince by and with Parliaments, whenever the Condition and Necessities of the State require them, however according to it's primitive Institution it was the best of all others, yet as well in that as in Christianity it self, there have been found out wayes of Corruption, and that is, when either they sit *too long*, or *too seldom*, or are *too frequently dissolved*; too *frequent Dissolutions* being no less *Dangerous* to the Subject, than too long Sessions. Nevertheless it may be in the Electors power to avoid the Inconveniences of both, and that is by making a *good Choice*.

Whereas if the Countrey People will sell all that they have for a little roast Beef, a Glass of Sack, & a pot of Ale, Choosing him that will give them most Drink to Day, though they know him to be a Person who will sell both their Religion, Liberties and Fortunes to Morrow, then frequent Dissolutions will of necessity ruine us, and utterly debauch this Excellent Constitution; for the honest Countrey Gentleman designing no other private advantage but the true service of his King and Country, hath no reason, nor is he able, once in half a Year to spend 4 or 500 Pound, only to purchase a place full of Labour, Charge, trouble and Danger, without any profit to himself, only to serve those who put him to such an unkind Expence. And when honest Loyal Gentlemen are thus discouraged, if this *Sottish* humour amongst the Electors continue,

the

the Papist, and their Faction, or necessitous Persons of prostituted Consciences, will carry their Votes; for they can afford to *buy them* at large rates, being resolved to repay themselves, though with the ruine of the Nation.

This is no vain surmize or idle speculation, but the very truth of the Case; and the meanest Countrey Man that has Eyes in his Head, and will use them, can not but see it: for did you ever know a *Coachman or Groom buy his place*, unless he designed to *rob his Masters Bin*? Therefore whoever you put to charge in your Elections, blame him not, if he makes Money again of what he bought, and lays out his Vote in the House, not for your Good and that of the publick, but that way as will best please the Ministers of State, that so he himself may get a good place, or preferment, or Title of Honour by the Bargain. I say though he himself be a base Wretch for so doing, yet *You* cannot blame him, since you did not lend him your Trust, but sold it him, and what a Man hath purchased with his own Money, he may lawfully sell again.

Therefore that Man who does wilfully give his Voice for a *Knave* or *Fool*, does his endeavour to ruine both his Country, and himself and his Posterity, and to be as bad or worse than the Person he chooses; and if the greater part of the House happen to be *Wiser* or *Honester*, it is no thanks to him; he did as much as he could to debauch it; and therefore for his part, if none else were concerned with him, it were no matter if he were forthwith made a *Slave*, and his Children *Perpetual Vassals*.

The before mentioned old Lord Treasurer *Burleigh* (who is thought to have been the greatest Statesman that ever this Nation bred) did frequently deliver as a Maxime, or rather as a Prophecy, *That* England *can hardly be ruined, unless it be by her own Parliaments*; undoubtedly foreseeing that other oppressions, as being wrought by violence, might perhaps by violence be in

in time ſhaken off again; whereas when in a Parliamentary way we are undone by a Law, that can never be reverſt but by a down-right Rebellion, becauſe the parties advantag'd by that Law, will never agree to the repealing of it; and a Rebellion is both ſo dangerous, and of ſo black a Character, as men either rich or conſcientious, will not engage therein; and therefore no publick miſchief is ſo irrecoverable as that which is grown into a Law, and nothing, you know, can become ſo, but what is Impoſed upon you by Parliament. Such is the happy frame of your Government, ſo prudently and ſo ſtrongly have your Anceſtors ſecured Property and Liberty, (reſcued by inches out of the hands of encroaching violence) that you cannot be enſlaved but with chains of your own making, for as you are never undone till you are undone by Law, ſo you can never be undone by a Law, till you chuſe the undoing Legiſlators; and may not your enemies add *Scorn* to their *Cruelty*, and pretend Juſtice for both, when they can plead they had never trampled on your heads, had not you laid them on the Ground?

From what has been ſaid, it evidently appears of what vaſt importance it is at all times, when ever his Majeſty ſhall be pleas'd to iſſue out his Writs for a Parliament, to chuſe (as much as in us lies) a good houſe of Commons, as we tender our Religion, Liberties, Eſtates and Poſterity; upon our well or ill chuſing depends our well or ill-being; 'tis here as in marriage or war, there is no room for ſecond Errors, one Act may ruine a Nation beyond retrieve.

Beſides, they whom you chuſe will repreſent the qualities as well as the perſons, and if you ſend up a falſe glaſs, it will repreſent you with an ugly face; you have hitherto had the repute of an antient and grave people, but if you chuſe raw Saplings, green heads, unexperienced children, the world will Judge of you, as they once did of the *Grecians*, that you were either

always children, or are grown twice so; you have long been a famous Religious Protestant Nation, but if you chuse debauched swearing Atheists, men of no Religion, or such as are meer formalists, or enclinable to Popery, what can the world think but that the Nation has lost its sense of Religion, and is content to be led back into the *Egyptian* darkness of *Romish Fopperies*: you have formerly had the Character of a sober temperate Nation, but if you chuse Drunkards for your Trustees, or give your voices for those that gorge you most with liquor, what can be supposed but that you are already *Drunk* with folly, and Just *Reeling* into Slavery?

Some Directions concerning the Choice of Members to serve in Parliament, and the Qualifications that render a Gentleman fit *or* unfit, *worthy or undeserving of your Voices for so great a Trust.*

1. AVoid *all such as hold any Office of Considerable value during pleasure*, they being subject to be Over-awed. For altho a man wish well to his Countrey, and in the Betraying thereof, knows that at the long run he mischiefs and enslaves his Posterity, if not himself, yet the narrowness of mens minds is such, as makes them more tenderly apprehend a small *present* damage, than a far greater hereafter. Such men must of necessity be under a great Temptation and Distraction, when their Consciences and Interest look different ways. For to say truth, such an *Office* is but a softer word for a *Pension*; Therefore since these men know before hand the Inconveniences that attend the Trust of a Member of Parliament faithfully discharged, 'tis very suspitious and reflecting upon their honesty, if any such stand for

for it; And I think we are bound in Charity, nor can we do them a greater Courteſy, than to Anſwer their Petition in the Lords Prayer—*Not to lead them into Temptation.*

2. Suſpect *all thoſe* (eſpecially if they are men of Ill Repute) *who in their Profeſſion, or near Relations, have dependency upon the Court.* For though to be the Kings Servant is no Bar from being a Parliament-man, or from ſerving his Country honeſtly in that Station, and no doubt ſeveral of them have at divers times well diſcharged the ſame, yet frequently ſuch perſons (unworthily) gueſſing at their Prince by themſelves, are apt to Vote right or wrong, as they imagine will moſt pleaſe the Prerogative Party, and 'tis an hard matter for a Courtier to pleaſe that great (perhaps corrupt) Miniſter who ſupports him, and thoſe whom he Repreſents, at the ſame time: And if he endeavours to oblige both, he becomes ſuch an uncertain Weathercock, as moſt commonly he pleaſes neither. And therefore the moſt prudent and honeſteſt of the Courtiers are always obſerved to decline being Parliament men, for this very reaſon.

3. Meddle not with *ſuch as have been or are like to prove Penſioners*, or receive Salaries for *ſecret Services*. I know they would now *Brazen it out*, That there were no ſuch men, no ſuch practices. But the contrary is notorious; did not the Houſe of Commons laſt *Weſtminſter*-Parliament take the thing into Examination? nay did not *Sir S. F. by his memory* (without *the books*, which for ſome reaſons were refuſed to be brought in) name about 30 of them, and the reſpective *Sums* yearly paid to each? and would not *many more* have been diſcovered, and the whole knot of them ſeverely and exemplarily puniſht, if that Parliament had a little longer Continued? Now there is none more implacably your Enemy, then that perſon whoſe Intereſt it

is to destroy you; that must neither eat nor drink, except you starve; that must go in Rags, except you go naked; are taught to Fleece you, that they may keep themselves warm. To prevent this, avoid not only all former Pensioners, but such other as may be in danger to become so; Therefore meddle not with men of necessitous Fortunes, or much in Debt. The Representative of a Nation ought to consist of the most wise, Wealthy, sober, and couragious of the people, not men of mean Spirits and little figure, and sordid passions, that would sell the Interest of the People that chose them to advance their own, or be at the beck of some great man, in hope of a lift to a good Imploy. Those that have *fair Estates*, have in a manner given *Hostages* to their Country, and must be *Errant Fools* before they can play the *Knave* with you. But what cares the *needy Passenger* if the *Ship* perish, if he can but save himself in the *long Boat*, or get some Booty by the *Wreck*? What Protection do you expect from them, who cannot shew their Faces with confidence without a Protection, either in or out of Parliament? Who are no less apprehensive of a *Bayliff*, than of the growing greatness of the *French*; and dread not *Popery* half so much as an *Out-Lawry*? Will you secure them within the Walls of the house of Commons, who were better secured within the Walls of a Common Goal? Who can never pay their debts Contracted by their Prodigality, but out of your Purses; and must run you in, to get themselves out of their Mortgages? These mens fear of being *dissolved* makes them submit to any thing, rather than be left to the unmerciful Rage of their hungrey Creditors, who have so long fasted for their money. For all such persons (though some of them may be lookt upon as honest fair-Conditioned Gentlemen and good House-keepers,) are in danger of being Tempted to repair the decays of their own private For-

tu

tunes, by the Ruine of the Publick. Moreover he Chooſing of ſuch broken Fortunes, decays Trade, and ruins whole Families; inſomuch that I have known it drive many men (contrary to their own Inclinations) to wiſh never to ſee Parliaments more in *England*. In a word, if Beggars ever come to be your Repreſentatives, how can they Judge what is expedient for the Nation to *ſpare*, whoſe only Care is to get a piece of money to ſpend?

4. As you are not unadviſedly to Chooſe ſuch as retain to the Court at home, ſo much leſs are you to Elect any ſuch as *have their dependance upon Forreign Princes or States*, theſe are under ſtrong obligations to ſee you ruined; for our own Reaſon will tell you, that no Forreign Power will prodigally throw away his Piſtoles, where he expects not an Harveſt anſwerable to his Seed 'Tis poſſible This Caution may not be unneceſſary, for 'tis more than ſuſpected that there are ſome ſuch degenerated *Engliſhmen*, who having forſaken the Intereſt of their Native Countrey, have ſold themſelves to an *Outlandiſh* Intereſt, that they may the better gratify their own Ambition, and thoſe Potent Luſts which their own meaner Fortunes could not otherwiſe feed and ſatiate.

5. Be not over-fond to *receive Bribes and Gratifications* from perſons that would fain make a prey of you, and by their purſes, laviſh treats, and entertainments, would allure you to proſtitute your voices for their Elections; you may be aſſured they would never bid ſo high for your Suffrages, but that they know where to make their Markets. Chuſe the worthy *unwilling* perſon, before the ompliemental unworthy man, whoſe extraordinary forwardneſs prognoſticates he ſeeks not your good, but his own, ſeparate from the publick. Let us not play the fools or knaves to neglect or betray the Common Intereſt of our Country by a baſe Election, let neither *Fear*,

Flattery, nor *Gain* Biaſs us. Conſider with your ſelves what loſers you will be, if to laugh and be merry one day, the perſon you chooſe ſhould give you and your Children occaſion to mourn for ever after. ——*Say not he's but a ſingle perſon, one man cannot do ſuch hurt*,——Silly men! what if all other places ſhould be as bad as your ſelves? then all the houſe would be of a piece, and beſides don't you know that ſometimes a *ſingle man* has carried a *Vote*, which perhaps was no leſs miſchevous than *Irretrievable?* think how Juſtly the gallant antient *Heathens* may upbraid this baſeneſs of us Chriſtians, when as they ſacrificed many of their children, nay and oftentimes their own Lives for the good of their Country, ſo on the contrary do we ſacrifice or at leaſt *Happ-Hizard* both our Religion, Lives, Children and Country for the *Swiniſh* pleaſure of a day or two's debauchery.

6. Make not your *publick choice the Recompence of private favours*, 'tis not pleaſing a Neighbour, becauſe rich and powerful, but ſaving of *England* that you are to regard. Neither pay nor return private obligations at the coſt of the Nation. Sr *John* is a *pretty Gentleman*, and treats people *Civilly*, and my *Landlord* is a good man, and has been kind, and Eſquire ſuch an one, is our next Juſtice of peace, but yet I will not give my voice contrary to my conſcience, or have an hand in a choice that may ruine my Country, to gratify any or all of them. Let not ſuch engagements put you upon dangerous Elections, as you *Love the Liberties* and the Freedom of your Poſterity. But tell them in this affair they muſt hold you excuſed, for that the weight of the matter will well bear it, this is your Inheritance; all may depend upon it; 'tis a more *Modeſt* requeſt if they would deſire you to *give them that Freehold and Eſtate* that qualifies you for an Elector, than to preſs you to be for a man that in your conſcience you think *unfit*, or not ſo fit as his *Competitor*, for ſo weighty a Truſt.

Truſt. Men don't uſe to *Lend their Wives*, or *give their Children* to ſatisfie perſonal Kindneſſes, nor ought you to make a *Strop* of your Birthright (and that of your Poſterities too) for a meſs of pottage, a *Feaſt*, or a luſty *Drinking Bout*; there can be no proportion here, and therefore none muſt take it ill, that you uſe your freedom about that which in its conſtitution is the great *Bulwark* of all your antient Liberties.

7. Have a care of *Ambitious* men and *non-Reſidents*, ſuch as Live moſt about the Town, and not with their Eſtates in the Country. *Theſe ſeek Honours and Preferments* above; and little or never embetter the Country with their Expences or Hoſpitality, for they are too much for themſelves to Act vigorouſly for the advantage of their Country; or if in the houſe they do for a while *Swagger* a little, and *Speak* it briskly, 'tis only that the Court may take notice of them, and *take them off* by ſome preferment; and then theſe *falſe Patriots* ſhall be the only ſticklers for unbounded Prerogative.

8. Be reſolved (againſt all Temptations) to chooſe *no Minors*: What, will you be content with *ſucking Stateſmen*? and *Beard-leſs Politicians*? and *Reboams Conſellors*? then, expect, for we'l you deſerve to be laſht with *Scorpions*: Can you Judge them fit to diſpoſe of your Liberties, Lives, Eſtates and Religion, who cannot legally diſpoſe of their own Eſtates or themſelves? What ſecurity can they give you, that they will not give away *yours and you*, whoſe Bond in the eye of the Law will not be taken for 40s? but ſure your own experience of what ſuch *young Green Perſons* have been and done in former Parliaments, hath I hope learned you ſufficient wiſdom, not to chuſe the like again.

9. Elect no prodigal or *Voluptuous* perſons, for beſides that ſuch are not regular enough to be *Law-makers*, they are commonly idle, and though poſſibly they

may wish well to your Interest, yet they will rather lose *it* than their *Pleasures*, they will scarce leave one of their *Nightly Revellings* to give you their attendance and Service next day, and therefore they are not to be relyed upon. And upon this occasion I shall borrow the words of *an Author* to whom I do not much desire to be beholden; *Some Senators are drawn from their duties by Pleasure; perhaps a party at* Tennis, Bowles, Cards, a pack of Dogs, a Cock-Fight, or a Horse-match, a Comedy, a good Fellow, or a Mistress. *And while they are* thus employed, the Vigilant faction steals a Vote that is worth a Kingdom.—*Some again are so transported with the Vanity of* Dress and Language, *that rather than serve the publick with* one hair amiss, *or in* one broken Period, *they'l let the publick* perish, Mallent Rempublicam turbari, quam capillos. *These, while their Country lies at* Stake, *are* ordering *of their* heads, *and* Polishing the Phrase, shaping *the* parts *of a* Set-Speech, till it is too late to use it. *Nothing methinks does less beseem a* Grave Assembly, *than this* Facultatula Loquendi; *this same* Rhetorical Twittle-twattle; *it spins out so much time in* tedious Circumstance, *that it makes a man e'en* sick *of a* good Cause, *and for the very* form, *prejudge the* Reason *of it.*——Sloth *and* Neglect, *are yet more dangerous in a Senator, in regard of* Surprizes *from the* Faction, *these think a* wet day, *or a* cold morning, a sufficient discharge *of their* Attendance; *and while they are taking* t'other Napp, *or* t'other Bottle, *the* Monarch *perhaps has lost his* Crown, *or the* Subject *his* Liberty.

9. Avoid all those that *play the Protestants in Design, and are indeed disguised Papists*, ready to pull off their mask on the first opportunity, whenever time serves. You may know them by their swaggering for a Popish Successor to maintain the Protestant Religion, Their *Laughing at the Popish Plot* and disgracing the Evidence of it, and at the same time affirming

affirming (without any grounds) the *reality of a Presbyterian Plot*; their associating with known *Papists*, and winking at them, but eager heats to put the Laws in Execution with the utmost rigour upon Protestant Dissenters; These are men whose affection for the Protestant Interest, notwithstanding all their fair Speeches may justly be *question'd*, since their practice gives their words the *Lye*; nor will their large pretensions and seeming zeal for the Church of *England*, at all prevail with wise men; for we know the Papists themselves, when 'tis for their Interest, will pretend the same thing, and speak fair of our Church, and rail only upon the *Fanaticks*; when yet in their hearts, they hate our *Church* as much as they do any of the *Sects*; Observe all their *Pamphlets*, the noise is against the Presbyterians and Dissenters, but 'tis with a design to destroy them first, and the Church of *England* afterwards; for when so great a body of Protestants are represented as *Disloyal* and *Dangerous*, and Crusht and undone, the Church of *England men* will be left *alone*, and then they hope to deal with them well enough; and that this is their aim, may be perceiv'd if you observe how zealous the *Papists* are to stirr up Prosecution against the *Dissenters*, and none more Joyful when it goes on, *&c.* Now what's all this for? are they think you indeed and in earnest so very *kind* to the Church of *England*? for what acquaintance? No, no, 'tis all Dissimulation and Roguery, a Design which they drive on first to *divide* and then to *ruine* us. Therefore beware how you chuse any such *Tool* as they make use of therein. The contrary, are men that bless God for the most happy *discovery* of the Hellish Popish Plot, and all their wicked *shams* ever since, and would have the bottom thereof fairly searcht into, and the *Traitors*, though never so great or potent, brought to Condign punishment, and in their Conversation zealously direct themselves in an Opposition to the *Papal Interest*, which indeed is a combination

gainſt *good Senſe*, *Reaſon*, and *Conſcience*, and to Introduce a *blind Obedience* without (if not againſt) Conviction: And that Principle which Introduces *Implicite Faith and blind Obedience in Religion*, will alſo introduce *Implicite Faith and blind Obedience in Government*, ſo that it ſhall be no more the *Law* in the one than in the other, but the will and power of the Superiour that ſhall be the *Rule and Bond* of our Subjection; this is that fatal miſchief Popery brings with it to *Civil Society*, and for which all ſuch Societies ought to beware of it and its friends and Abetters, which ſure none can be, but ſuch who are deſign'd for *Slaves* by Nature as well as Fortune, debaucht lew'd unthinking *Animals*, properly enough called *Tories*; *Silly*, *Servile*, yet conceited and Cruel, Creatures altogether of an *Iriſh* underſtanding.

10. As for you *Citizens*, *Burgeſſes*, and *Freemen* of Cities and Corporations in particular, I ſhall only ſay, *That whoever is not fit to be Choſen Knight of the Shire, is likewiſe unfit to be choſen a Burgeſs*; Neither let the more ſpecious pretences of any man that ſhall promiſe to build you a *Town-Hall*, or *Relieve you Poor* with money, or out of his Adjacent *Woods*, or any ſuch *Good-morrows*, deceive you; for if ſo, wherein are you wiſer than your *Horſes*, whom you catch every day, and Clap a Bridle into their mouths, only by ſhewing them a few *Oats*, which they are never like to Eat? Even the very *Mice* are too wiſe to be taken by an *Old Bait*, but will firſt have the trap new baited before they'le meddle: And yet I have known a Corporation which has been taken *TWICE* by the ſame Bait. But ſuppoſe theſe men do really perform what they promiſe, what Compenſation is that, if the ſame men ſhould lay a good *Swinging Tax* upon your Eſtates without any real cauſe? or ſhould *give up* the very power you have of Taxing your ſelves or ſending your Repreſentatives in Parliament (for one *bad Parliament* may ruine us) what good would

would the money for your *Poor* do in such a case, more than that when you are thereby reduced to beggery, you might perhaps yourselves (the Gentry of the Country having no reason to releive you) be forc'd to come in for a *small share* of this their Hypocritical Charity? An excellent Reward for a *Knavish Folly*: Neither say—O! *this is but one man, and can have but one Vote, he will do our Town a great deal of good, and can do us but little hurt if he would*, &c. For, 1. (as I told you before) one or *two Voices* have sometimes carried a *Vote* of great Importance; 2. You know not what mischief your *bad example* may do in other Corporations, and *if all* should do so, what a miserable case would you be in? Since the Voices of the Boroughs make two thirds of the House. Lastly, no man can tell the Influence that *one running Talkative Ill-man* may get over the rest of the House, especially over those that weigh words more than Sense, or Reason, and the Interest of their Countrey.

Hitherto we have talked Negatives, and described such as are not *fit to be Chosen; Now we come positively to set before you who are fit for such a* Trust, *especially in such a dangerous Juncture as we are faln into. In order to which we must consider for* what ends *they serve, and they are principally* Two. *The first is, The preservation of our Religion from Popery; the other is, To preserve inviolable our Liberty and Property according to the known Laws of the Land, without any giving way unto or Introduction of that Absolute and Arbitrary Rule practiced in Forreign Countreys, which we are neither to imitate or regard—therefore,*

1. Take Care to Choose such as are well known to be *men of good Consciences, fearing God*, throughly Principled in the Protestant Religion, and of high Resolution to maintain it with their Lives and Fortunes.

And

And among these, rather cast your Favour upon men of *large Principles* (I mean in matter of meer opinion) such as will not sacrifice their Neighbours Property and Civil Rights to the frowardness of their own Party in Religion. *Narrow Souls*, that will own none but those that bear their own Image and Superscription, will sooner raise Persecution *at home*, than secure us from *Popery* and *Invasion* from abroad. The *great Interest of England at this day, is, to Tolerate the Tollerable, to bear with the weak, to encourage the Conscientious, and to restrain none but such as would restrain all besides themselves.*

2. As we ought as near as we can possibly judge, to Elect good *Protestants towards God, and just towards men*, yet since in this Corrupt Age wherein we Live, men are not so *spiritual* as they ought to be, it is not amiss to seek for those whose spiritual Interest is seconded by a *Temporal* one; For though men talk high, and keep a great Noise with Conscience and love to their Country, yet when you understand *Mankind* aright (not as it should be, but as it is, and I fear ever will be) then you will find that private Interest is the *string* in the *Bears Nose*, it is that Governs the *Beast*. And therefore the surest Champions for our Religion (*Cæteris Paribus*) against the Papacy, are our *Abby Landed-men*, for notwithstanding the Registred *Dispensation* to King *Henry* the Eighth from the Pope for the seizing of those Monasteries and Lands, yet of late they pretend that the Pope had not Power to Alien them from the Church, so that the present Possessors can never trust or rely upon *that*, or any *new* promises or Actual Grants thereof, especially from *him* whose everlasting and declared Maxime it is—*Never to keep Faith with Hereticks.* Undoubtedly, to make easy his ascent into the Saddle, he will proffer many *Assurances* and Grants, but if these Abby-Landed men be not the most *silly* of all others, they will never believe him. For when he

is.

is once firmly ſetled, then will he with his *Canon-Law Diſtinctions*, like Fire under Quickſilver, Evaporate away all his *Promiſes*, and violently Reſume the Lands, glorying of his own *Bounty*, if he require not the mean *profits* ever ſince they have been ſacrilegiouſly with-held from Holy Church.

3. Endeavour to Chuſe men of *Wiſdom* and *Courage*, who will not be *Hectored* out of their Duties by the Frowns and Scowles of men. Never had you more need to pitch upon the old *Engliſh* Spirit, that durſt be faithfull and juſt againſt all Temptations. What a degenerate Race have we kno wn that could never yet Reſiſt *Smile* or *Frown*, but tamely ſunk below their own Convictions, and knew the Evil, they did, yet durſt not but Commit it?

4. Make it your buſineſs to Chuſe ſuch as are reſolved to ſtand by and maintain the *power and priviledges of Parliament* (for they are the Heart-ſtrings of the Common-Wealth) together with the power and juſt Rights of the King, according to the Laws of the Kingdom, ſo as the one may not Entrench upon the other. And ſuch as with a becoming true *Engliſh Courage* will Proſecute all Traitors, whether already Impeached, or to be Impeached; And to ſecure us from Popery hereafter, and to get remove all *Corrupt and* Arbitrary *Miniſters of State*, and *wicked Judges*, and *ſtiflers* of the diſcovery of the Popiſh Plot, and *Suborners*, and vile Pamphleteers, that endeavour ſo induſtriouſly to Clear the Papiſts, and expoſe the Proteſtant Religion, and poiſon the People.

Laſtly, Take particular notice of thoſe who are *men of Induſtry and Improvement*; for ſuch as are Ingenious and laborious to propagate the growth and advantage of their Country, will be very tender of yeilding to any thing that may weaken or Impoveriſh it.

If you Conduct your ſelves thus prudently, honeſtly and gallantly, in your *Choice*, without putting the Gentlemen

Gentlemen whom you chuſe to ſerve you, to charges, the conſequence will be, that as you will be ſure to have a *good Parliament* when ever His Majeſty ſhall pleaſe to call one, and ſuch as will be zealous for the ſafety of the Proteſtant Religion, and proſperity of the Nation, if they ſhall continue to *ſit and Act*; ſo, on the other ſide, If they ſhould be *Diſſolv'd*, and never ſo many new Parliaments be called, yet you run no hazard, for the ſame *Candidates* will ſtill be ready to ſerve you. And ſo we ſhall conclude our diſcourſe of Parliaments, when I ſhall firſt have obſerv'd that antiently *all Freemen of England* (though not *Free-holders*) had a right to chuſe their Repreſentatives, till the ſame was altered and limited by the following Statute, for the reaſons therein mention'd.

The Statute Anno 8. Hen. 6. Cap. 7.

What ſort of men ſhall be *Chuſers*, and who ſhall be Choſen *Knights* of the Parliament.

ITem, *whereas the Elections of Knights of Shires to come to the Parliaments of our Lord the King, in many Counties of the Realm of* England, *have now of late been made by very great, Outragious and* Exceſſive numbers *of People, dwelling within the ſame Counties of the Realm of* England, *of the which moſt part was of people of* ſmall Subſtance, *and of no value, whereof* every one of them *pretended a voice Equivalent, as to ſuch Elections to be made, with the moſt worthy Knights and Eſquires, dwelling within the ſame Counties, whereby Man Slaughter, Riots, Batteries, and Diviſions among the Gentlemen, and other People of the ſame Counties ſhall very likely riſe and be, unleſs convenient and due Remedy be, provided*

provided in this behalf: (2) *our Lord the King con-*
sidering the premiſes, hath provided, ordained and E-
ſtabliſhed by Authority of this preſent Parliament,
that the Knights *of the Shires to be choſen within*
the ſaid Realm of England *to come to the Parliament*
of our Lord the King hereafter to be holden, ſhall
be choſen in every County of the Realm of England,
by people dwelling and reſident in the ſame Counties,
whereof every one of them ſhall have Land or Tene-
ment, to the value of forty Shillings by the year, *at the*
leaſt, above all Charges, (3) *and that they which*
ſhall be ſo choſen ſhall be dwelling and reſident
within the ſame Counties: (4) *and ſuch as have the*
greateſt number of them that may expend forty ſhil-
lings by the year and above, as afore is ſaid, ſhall be
returned by the Sheriffs of every County, Knights for
Parliament, by Indentures ſealed betwixt the ſaid
Sheriffs and the ſaid Chuſers ſo to be made: (5) *and*
every Sheriff of the Realm of England, *ſhall have*
power by the ſaid authority to examine upon the
Evangeliſts every ſuch Chuſer, how much he may ex-
pend by the year: (6) *and if any Sheriff returned*
Knights to come to the Parliament, contrary to the
ſaid Ordinance, the Juſtices of Aſſizes in their
Seſſions of Aſſizes ſhall have power by the authority
aforeſaid therefore to enquire, (7) *and if by inqueſt the*
ſame be found before the Juſtices and the Sheriff
thereof be duly attainted, that then the ſaid Sheriff
ſhall incur the pain of an hundred pounds to be paid
to our Lord the King, and alſo that he have Im-
priſonment by a year, without being let to main-
priſe or bail (8) *and that the Knights for the Par-*
liament returned contrary to the ſaid Ordinance
ſhall loſe their wages.

Provided always, that he which cannot expend
forty Shillings by year, as aforeſaid, ſhall in no wiſe
be Chuſer of the Knights for the Parliament; (2) *and*
that in every Writ that ſhall hereafter go forth to the

Sheriff

Sheriffs to chuſe Knights for the Parliament, mention be made of the ſaid Ordinances.

Note

Though this Statute make the penalty on a Sheriff *but* 100*l. for a falſe* Return, *yet the* Houſe *may further puniſh him by Impriſonment,* &c. *at their pleaſure, by the Law and Cuſtom of Parliaments.*

We ſhall now proceed to certain excellent Laws of a latter Date, *made for the explanation and conſervation of our Liberties; and in the firſt place preſent you with that excellent Petition of Right, granted by King* Charles *the firſt.*

Anno Regni Caroli Regis Tertio.

The PETITION *exhibited to His Majeſty by the Lords Spiritual and Temporal, and Commons in this preſent Parliament aſſembled, concerning diverſe* Rights and Liberties *of the Subjects.*

To the Kings moſt excellent Majeſty.

HUmbly ſhew unto our Soveraign Lord the King, the Lords *Spiritual* and *Temporal* and *Commons* in Parliament aſſembled, That whereas it is declared and enacted by a Statute made in the time of the Reign of King *Edward* the firſt, commonly called *Statutum de Tallagio non Concedendo*, that no Tallage or *Aid* ſhall be laid or Levyed by the King or his Heirs in this Realm, without the *good Will and Aſſent* of the Arch-biſhops, Biſhops, Earles, Barons, Knights, Burgeſſes, and other the *Freemen* of the Commonalty of this Realm; (2) and by authority of Parliament holden in the five and twentieth year of the Reign of King *Edward* the third, it is declar-

ed

ed and Enacted, that from thenceforth no perſon ſhould be Compelled to make any *Loans* to the King againſt his Will, becauſe ſuch Loans were againſt Reaſon, and the *Franchiſe of the Land*; (3) And by other Laws of the Realm it is provided, that none ſhould be Charged by any Charges or Impoſition called a *Benevolence*, nor by ſuch like Charge (4) By which the Statute before mentioned, and other the good Laws and Statutes of this Realm, your Subjects have *Inherited this Freedom*, that they ſhould not be Compelled to Contribute to any Tax, Tallage, Aid, or other like Charge, *not ſet by Common Conſent in Parliament.*

2. Yet nevertheleſs of late divers *Commiſſions* directed to ſundry Commiſſioners in ſeveral Counties, with Inſtructions, have Iſſued, by means whereof your people have been in divers places Aſſembled and required to lend certain Sums of Money unto your Majeſty, and many of them, upon their refuſal ſo to do, have had *an Oath* adminiſtred unto them not warrantable by the Laws or Statutes of this Realm, and have been Conſtrained to become bound to make Appearance and Attendance before your *Privy Council*, and in other places, and others of them have been therefore Impriſoned Confined and ſundry other ways moleſted and diſquieted (2) and divers other Charges have been laid and levyed upon your people in ſeveral Counties by Lord Lieutenants and Deputy Lieutenants, Commiſſioners for Muſters, Juſtices of Peace, and others, by Command or direction from your Majeſty to your Privy Council, againſt the Law and free Cuſtoms of this Realm.

3. And where alſo by the Statute called the *great Charter* of the Liberties of *England*, it is declared and Enacted, that no Freeman may be taken or impriſoned, or be diſſeiſed of his Freehold or Liberties, or of his free Cuſtoms, or be outlawed or Exiled, nor in

in any manner deſtroyed, but by the lawful Judgment of his Peers, or by the Law of the Land.

4. And in the eight and twentieth year of the Reign of King *Edward* the third, it was declared and Enacted by Authority of Parliament, that no man of what Eſtate or Condition that he be, ſhould be put out of his *Land or Tenements*, nor taken nor *Impriſoned*, nor diſherited, nor put to death, without being brought to anſwer, by due proceſs of Law.

5. Nevertheleſs, againſt the tenor of the ſaid Statutes and other the good Laws and Statutes of your Realm to that end provided, diverſe of your Subjects of late have been *Inpriſoned* without any cauſe ſhewed; (2) and when for their deliverance they were brought before Juſtices by your Majeſties Writs of *Habeas Corpus*, there to undergo and and receive as the Court ſhould order, and their keepers commanded to certify the cauſes of their Detainour, no cauſe was certifyed, but that they were detained by your Majeſties *ſpecial command*, ſignified by the Lords of your privy Council, and yet were returned back to ſeveral priſons without being charged with any thing, to which they might make anſwer according to the Law.

6. Whereas of late great *Companies of Souldiers* and Mariners have been diſperſed into divers Counties of the Realm, and the Inhabitants againſt their wills, have been compelled to receive them into *their Houſes*, and there to ſuffer them to ſojourn againſt the Laws and Cuſtomes, of this Realm, and to the great grievance and vexation of the People.

7. And whereas alſo by authority of Parliament, and in the five and twentieth year of the reign of King *Edward* the third, it is declared and enacted, that no man ſhall be forejudged of life and limb againſt the form of the great Charter and Law of the Land; (2) and by the ſaid great Charter and other the Laws and Statutes of this your Realm, no man ought to

be

be Judged to death, but by the Laws eſtabliſhed in this your Realm, either by the Cuſtomes of the Realm, or by Acts of Parliament; (3) And whereas no offender of what kind ſoever, is exempted from the proceedings to be uſed, and puniſhments to be Inflicted by the Laws and Statutes of this your Realm; nevertheleſs, of late diverſe Commiſſions under Your Majeſties great Seal have Iſſued forth, by which certain perſons have been Aſſigned and appointed Commiſioners, with power and authority to proceed within the Land, according to the Juſtice of *Martial Law*, againſt ſuch Souldiers and Mariners, or other diſſolute perſons joining with them, as ſhould commit any Murder, Robbery, Felony, Mutiny, or other Outrage or Miſdemeanour whatſoever, and by ſuch ſummary Courſe and Order as is agreable to Martial Law, and as is uſed in Armies in time of war, to proceed to the Tryal and Condemnation of ſuch Offenders, and them to cauſe to be executed and put to death accotding to the Law Martial.

8. By Pretext whereof ſome of your Majeſties Subjects have been by ſome of the ſaid Commiſſioners *put to death*, when and where, if by the Laws and Statutes of the Land they had deſerved death, by the ſame Laws and Statutes alſo they might, and by no other ought to have been Judged and Executed.

9. And alſo ſundry grevious offenders, by colour thereof, claiming an exemption, have Eſcaped the puniſhments due to them by the Laws and Statute of this your Realm by reaſon that divers of your Officers and Miniſters of Juſtice have unjuſtly refuſed or forborne to proceed againſt ſuch Offenders according to the ſame Laws and Statutes, upon pretence that the ſaid Offenders were puniſhable *only by Martial Law*, and by Authority of ſuch Commiſſion as aforeſaid; (2) which Commiſſions, and all other of like nature, are wholly and directly Contrary to the ſaid Laws and Statutes of this your Realm.

10. They do therefore humbly pray your moſt Excellent Majeſty, that no man hereafter be compelled to make or yield any *Gift*, *Loan*, *Benevolence*, *Tax*, or ſuch like Charge, without Common conſent by act of Parliament; (2) and that none be called to make anſwer, or take ſuch oath, or to give attendance, or be confined, or otherwiſe moleſted or diſquieted concerning the ſame, or for refuſal thereof; (3) and that no Freeman in any ſuch manner as is before mentioned be Impriſoned or detained; (4) And that your Majeſty would be pleaſed to remove the ſaid Souldiers and Mariners, and that your people may not be ſo burthened in time to come; (5) and that the foreſaid Commiſſions for proceeding by Martial Law, may be revoked and annulled; and that hereafter no Commiſſions of like nature may Iſſue forth to any perſon or perſons whatſoever to be executed as aforeſaid, leſt by colour of them, any of your Majeſties Subjects be deſtroyed, or put to death contrary to the Laws and Franchiſe of the Land.

11. All

11. All which they moſt humbly pray of your moſt Excellent Majeſty, *as their Rights and Liberties*, according to the Laws and Statutes of this Realm, and that your Majeſtie would alſo vouchſafe to declare, that the awards, doings and proceedings to the prejudice of your people in any of the premiſſes, ſhall not be drawn hereafter into Conſequence or Example; (2) and that your Majeſty would be alſo graciouſly pleaſed for the further comfort and ſafety of your people, to declare your Royal Will and Pleaſure, that in the things aforeſaid, all your Officers and Miniſters ſhall ſerve you according to the Laws and Statutes of this Realm, as they tender the honour of Your Majeſty and the proſperity of this Kingdom.

Which Petition being Read, the ſecond of *June*, 1682. the Kings Anſwer was thus delivered unto it.

The King willeth, that Right be done, according to the Laws and Cuſtoms of the Realm, and that the Statutes be put in due Execution, that His Subjects may have no Cauſe to complain of any wrong, or oppreſſions, contrary to their juſt Rights and Liberties: To the Preſervation whereof, he holds himſelf in Conſcience as well obliged, as of his Prerogative.

But this Anſwer not giving ſatisfaction, the King was again Petitioned unto, that he would give a full and ſatisfactory anſwer to their Petition in full Parliment—Whereupon the *King* in *Perſon*, upon the ſeventh of *June*, made this Second Anſwer,

My Lords and Gentlemen!

The Anſwer I have already given you, was made with ſo good Deliberation, and approved by the Judgment of ſo many Wiſe Men, that I could not have Imagined, but that it ſhould have given you full ſatisfaction; but to avoid all ambiguous Interpretations, and to ſhew you that there is no doubleneſs in my meaning, I am willing to pleaſe you *in words*, as well as in *ſubſtance*; read your Petition, and you ſhall have an Anſwer that I am ſure will pleaſe you.

And then cauſing the Petition to be read diſtinctly by the Clerk of the Crown, the Clerk of the Parliament read the Kings Anſwer thereto in theſe words, *Soit Droit Fait, Come eſt deſire*, which is, *Let Right be done as is deſired.*

This Anſwer, and the manner of Confirming this Law, I have the rather recited, becauſe the Kings Anſwer and Circumſtances relating thereunto, are wholly left out in our laſt Printed *Book of Statutes.*

The *Petition* it ſelf is ſo plain that there needs no Comment thereon, only the Reader may obſerve that the things therein mentioned were the antient Rights of the people, and therefore they expreſly demand them of the King *as their Rights and Liberties.*

In the next place we ſhall add, the late excellent *Habeas Corpus Act*, becauſe relating to the ſame Subject, *viz.* The freeing of the *Subject* from cauſeleſs tedious and Arbitrary Impriſonments.

Anno Triceſimo primo Caroli Secundi Regis

CHAP. II.

An Act for the better ſecuring the Liberty of the Subjekt, and for prevention of Impriſonments beyond Seas.

Comonly called the Habeas Corpus Act.

I. WHereas great delays have been uſed by Sheriffs, Goalers, and other Officers to whoſe Cuſtody any of the Kings Subjects have been committed for Criminal, or ſuppoſed Criminal matters, in making Returns of Writs of *Habeas Corpus* to them directed, by ſtanding out an *Alias*, and *Pluries*, *Habeas Corpus*, and ſometimes more, and by other ſhifts, to avoid their yielding obedience to ſuch Writs, contrary to their duty, and the known Laws of the Land, whereby many of the Kings Subjects have been, and hereafter may be long detained in Priſon, in ſuch Caſes where by Law they are Bailable, to their great Charges and Vexation.

II. For the prevention whereof, and the more ſpeedy relief of all perſons Impriſoned for any ſuch Criminal, or ſuppoſed Criminal matters. (2) Be it Enacted by the Kings moſt Excellent Majeſty, by and with the Advice and Conſent of the Lords Spiritual, and Temporal, and Commons in this preſent Parliament Aſſembled, and by the Authority thereof, That whenſoever any perſon or perſons ſhall bring any *Habeas Corpus* directed unto any Sheriff or Sheriffs, Goaler, Miniſter or other perſon whatſoever, for any perſon in his or their Cuſtody, and the ſaid Writ ſhall be ſerved upon the ſaid Officer, or left at the Goal or Priſon with any of the under Officers, under Keepers, or Deputy of the ſaid Officers or Keepers, that the ſaid Officer or Officers his or their under Officers or Keepers or Deputies

ſhall

ſhall within three days after the ſervice thereof, as aforeſaid (unleſs the Commitment aforeſaid were for Treaſon or Felony, plainly and ſpecially expreſſed in the Warrant of Commitment) upon payment or tender of the Charges of bringing the ſaid Priſoner to be Aſcertained by the Judges or Court that awarded the ſame, and Endorſed upon the ſaid Writ, not exceeding twelve pence *per* Mile, and upon ſecurity given by his own Bond to pay the Charges of carrying back the Priſoner, if he ſhall be Remanded, by the Court or Judge, to which he ſhall be brought according to the true intent of this preſent Act, and that he will not make any Eſcape by the way, make Return of ſuch Writ. (3) And bring or cauſe to be brought the Body, of the party ſo Committed or Reſtrained, unto, or before, the Lord Chancellor, or Lord Keeper of the Great Seal of *England* for the time being, or the Judges or Barons of the ſaid Court from whence the ſaid Writ ſhall Iſſue, or unto and before ſuch other perſon or perſons before whom the ſaid Writ is made returnable, according to the Command thereof: (4) And ſhall then likewiſe certifie the true Cauſes of his Detainer, or Impriſonment, unleſs the Commitment of the ſaid party be in any place beyond the diſtance of twenty Miles from the place or places, where ſuch Court or Perſon is or ſhall be Reſiding: and if beyond the diſtance of twenty Miles, and not above one hundred Miles, than within the ſpace of twenty days after ſuch the delivery aforeſaid, and not longer.

III. And to the Intent that no Sheriff, Goaler, or other Officer may pretend ignorance of the import of any ſuch Writ, (2) Be it Enacted by the Authority aforeſaid, That all ſuch Writs ſhall be marked in this manner, *Perſtatutum Triceſimo primo* Caroli *Secundi Regis*, and ſhall be ſigned by the perſon that Awards the ſame. (3) And if any perſon or perſons ſhall be, or ſtand Committed or Detained

Detained as aforeſaid, for any Crime, unleſs, for Fe-
ony or Treaſon, plainly expreſſed in the Warrant of
Commitment, in the Vacation time, and out of
Term, it ſhall and may be lawful to and for the perſon
or perſons ſo Committed or Detained (other than per-
ſons Convict, or in Execution) by Legal Proceſs, or any
one on his or their behalf, to Appeal, or complain to the
Lord Chancellor, or Lord Keeper, or any one of
His Majeſties Juſtices either of the one Bench, or of
the other, or the Barons of the Exchequer of the
degree of the Coif. (3) And the ſaid Lord Chan-
cellor, Lord Keeper, Juſtices, or Barons, or any of
them, upon view of the Copy or Copies of the War-
rant or Warrants of Commitment and Detainer, or
otherwiſe upon Oath made, that ſuch Copy or Co-
pies were denied to be given by ſuch perſon or per-
ſons, or any on his, her, or their behalf, atteſted and
ſubſcribed by two Witneſſes, who were preſent at
the delivery of the ſame, to award and grant an
Habeas Corpus under the Seal of ſuch Court whereof
he ſhall then be one of the Judges. (5) To be di-
rected to the Officer or Officers in whoſe Cuſtody
the party ſo Committed or Detained, ſhall be re-
turnable immediately before the ſaid Lord Chancel-
lor or Lord Keeper, or ſuch Juſtice, Baron, or any
other Juſtice or Baron of the Degree of the Coif of
any of the ſaid Courts. (6) And upon ſervice
thereof as aforeſaid, the Officer or Officers, his or
their under Officer or under Officers, under Keeper
or under Keepers, or Deputy to whoſe Cuſtody the
party is ſo Committed or Detained, ſhall within the
Times reſpectively before limited, bring ſuch Priſo-
ner or Priſoners before the ſaid Lord Chancellor or
Lord Keeper, or ſuch Juſtices, Barons, or one of
them, before whom the ſaid Writ is made Returna-
ble, and in caſe of his abſence, before any other of
them, with the Return of ſuch Writ, and the true
Cauſes of the Commitment, and Detainer. (7) And
there-

thereupon within two days after the party ſhall be brought before them, the ſaid Lord Chancellor or Lord Keeper, or ſuch Juſtice or Baron before whom the Priſoner ſhall be brought as aforeſaid, ſhall diſcharge the ſaid Priſoner from his Impriſonment, taking his or their Recognizance, with one or more ſurety or ſureties in any ſum, according to their diſcretion, having regard to the Quality of the Priſoner, and Nature of the Offence, for his or their appearance in the Court of Kings Bench the Term following, or at the next Aſſizes, Seſſions, or General Goal-Delivery of and for ſuch County, City, or Place, where the Commitment was, or where the Offence was Committed, or in ſuch other Court where the ſaid Offence is properly Recognizable, as the Caſe ſhall require, and then ſhall Certifie the ſaid Writ with the Return thereof, and the ſaid Recognizance or Recognizances into the ſaid Court, where ſuch appearance is to be made. *(6)* Unleſs it ſhall appear, unto the ſaid Lord Chancellor, or Lord Keeper, or Juſtice or Juſtices, Baron or Barons, that the Party ſo Committed is Detained upon a Legal Proceſs, Order, or Warrant out of ſome Court that hath Juriſdiction of Criminal matters, or by ſome Warrant Signed and Sealed with the Hand and Seal of any of the ſaid Juſtices or Barons, or ſome Juſtice or Juſtices of the Peace, for ſuch matters or offences for the which by the Law the Priſoner is not Bailable.

IV. Provided always, and be it Enacted, That if any perſon ſhall have wilfully neglected by the ſpace of two whole Terms after his Impriſonment, to pray a *Habeas Corpus* for his Enlargement, ſuch perſon ſo wilfully neglecting, ſhall not have any *Habeas Corpus* to be granted in Vacation time in purſuance of this Act.

V. Be it further Enacted by the Authority aforeſaid, That if any Officer or Officers, his or their under

Under-Officer, Under-Officers, Under-Keeper, or Under-Keepers, or Deputy, ſhall neglect or Refuſe to make the Returns aforeſaid, or to Bring the Body or Bodies of the Priſoner or Priſoners according to the Command of the ſaid Writ, within the Reſpective times aforeſaid, or upon demand made by the Priſoner, or Perſon in his Behalf; ſhall Refuſe to deliver or within the ſpace of ſix hours after demand, ſhall not deliver to the Perſon ſo demanding, a true Copy of the Warrant or Warrants of Commitment and detainer of ſuch Priſoner, which he or they are hereby Required to deliver accordingly, all and every the Head Gaolers, and Keepers of ſuch Priſons, and ſuch other Perſon, in whoſe Cuſtody the Priſoner ſhall be detained, ſhall for the firſt Offence forfeit to the Priſoner or Party Grieved, the ſum of one hundred pounds; (2.) And for the ſecond Offence, the ſum of two hundred pounds, and ſhall and is hereby made Incapable to Hold or Execute his ſaid Office; (3.) the ſaid penalties to be Recovered by the Priſoner or Party grieved, his Executors or Adminiſtrators, againſt ſuch Offenders, his Executors or Adminiſtrators, by any Action of Debt, Suit, Bill, plaint or Information, in any of the King's Courts at *Weſtmin.* wherein no Eſſoign, Protection, priviledge Injunction, Wager of Law, or ſtay of Proſecution by *Non vult ulterius proſequi*, or otherwiſe, ſhall be Admitted or Allowed, or any more than one Imparlance (4.) And any Recovery or Judgment at the Suit of any Party Grieved, ſhall be a ſufficient Conviction for the firſt Offence; and any after Recovery or Judgment at the ſuit of a Party Grieved for any Offence after the firſt Judgment, ſhall be a ſufficient Conviction to Bring the Officers or Perſon within the ſaid penalty for the ſecond Offence.

6. And for the prevention of unjuſt Vexation by Reiterated Commitments for the ſame; (2.) Be it Enacted by the Authority aforeſaid, That no Perſon

or Perſons which ſhall be delivered or ſet at Large upon any *Habeas Corpus*, ſhall at any time hereafter be again Impriſoned or Committed for the ſame Offence, by any Perſon or Perſons whatſoever, other than by the Legal order, and proceſs of ſuch Court wherein he or they ſhall be Bound by Recognizance to appear, or other Court having Jurisdiction of the Cauſe; (3.) And if any other Perſon or Perſons ſhall knowingly contrary to this Act Recommit, or Impriſon, or knowingly procure or Cauſe to be Recommitted or Impriſoned for the ſame Offence, or pretended Offence, any Perſon or Perſons delivered or ſet at Large as aforeſaid, or be knowingly aiding or Aſſiſting therein, then he or they ſhall forfeit to the Priſoner or Party Greived, the ſum of five hundred pounds, any colourable pretence or variation in the Warrant or Warrants of Commitment notwithſtanding, to be Recovered as aforeſaid.

7. Provided alwayes, and be it further Enacted, That if any Perſon or Perſons ſhall be Committed for High Treaſon or Felony, Plainly and ſpecially Expreſſed in the Warrant of Commitment, upon his prayer or petition in open Court the firſt week of the Term, or firſt day of the Seſſions of *Oyer* and *Terminer*, or General Gaol delivery, to be Brought to his Tryal, ſhall not be indicted ſometime in the next Term, Seſſions of *Oyer* and *Terminer*, or General Gaol delivery after ſuch Commitment, It ſhall and may be Lawful to and for the Judges of the Court of Kings Bench, and Juſtices of *Oyer* and *Terminer*, or General Gaol delivery, and they are hereby Required upon motion to them made in open Court the laſt day of the Term, Seſſions, or Gaol delivery, either by the Priſoner, or any one in his Behalf, to ſet at Liberty the Priſoner upon Bail, unleſs it appear to the Judges and Juſtices upon Oath made, that the Witneſſes for the King could not be produced the ſame Term, Seſſions or General Gaol delivery; (2.) And

If

If any perſon or perſons Committed as aforeſaid, upon his prayer or petition in open Court, the firſt week of the Term, or firſt day of the Seſſions of *Oyer* and *Terminer*, and General Gaol delivery, to be Brought to his Tryal, ſhall not be Indicted and Tryed the ſecond Term, Seſſions of *Oyer* and *Terminer*, or General Gaol delivery after his Commitment, or upon his Tryal ſhall be Acquitted, he ſhall be diſcharged from his Impriſonment.

8. Provided alwaies, That nothing in this Act ſhall Extend to diſcharge out of priſon any perſon charged in debt, or other Action, or with proceſs in any Civil Cauſe, but that after he ſhall be diſcharged of his Impriſonment for ſuch his Criminal Offence, he ſhall be kept in Cuſtody according to Law, for ſuch other ſuit.

9. Provided alwaies, and be it Enacted by the Authority aforeſaid, That if any perſon or perſons ſubjects of this Realm, ſhall be Committed to any priſon, or in Cuſtody of any Officer or Officers whatſoever, for any Criminal, or Suppoſed Criminal matter, That the ſaid perſon ſhall not be Removed from the ſaid priſon and cuſtody, into the cuſtody of any other Officer or Officers, (2.) unleſs it be by *Habeas Corpus*, or ſome other Legal writ; or where the priſoner is delivered to the Conſtable or other Inferiour Officer to carry ſuch priſoner to ſome common Gaol; (3.) or where any perſon is ſent by order of any Judge of Aſſize, or Juſtice of the peace to any Common workhouſe, or houſe of Correction; (4.) or where the priſoner is Removed from one priſon or place to another within the ſame County, in order to his or her Tryal or diſcharge in due Courſe of Law; (5.) or in caſe of ſudden fire or Infection, or other Neceſſity; (6.) And if any perſon or perſons ſhall after ſuch Commitment aforeſaid, make out and ſign, or Counterſign any Warrant or Warrants for ſuch Removal aforeſaid, contrary to this Act, as well he that makes or ſigns or Counterſigns ſuch Warrant

or Warrants as the Officer or Officers, that obey or Execute the ſame, ſhall ſuffer, and Incur the pains, and Forfeitures in this Act before-mentioned, both for the firſt and ſecond Offence Reſpectively, to be Recovered in manner aforeſaid by the party Grieved.

10. Provided alſo, and be it further Enacted by the Authority aforeſaid, That it ſhall and may be Lawful to and for any priſoner and priſoners as aforeſaid, to move, and obtain his or their *Habeas Corpus*, as well out of the High Court of Chancery, or Court of Exchequer, as out of the Courts of Kings Bench, or common pleas, or either of them; (2.) And if the ſaid Lord Chancellour, or Lord Keeper, or any Judge or Judges, Baron or Barons for the time being, of the degree of the *Coif* of any of the Courts aforeſaid in the Vacation time, upon view of the Copy or Copies of the Warant or Warants of Commitment or Detainer, or upon Oath made, that ſuch Copy or Copies were denied as aforeſaid, ſhall deny any writ of *Habeas Corpus* by this Act Required to be Granted, being moved for as aforeſaid, they ſhall ſeverally Forfeit to the priſoner or party Grieved, the ſum of five hundred pounds, to be Recovered in manner aforeſaid.

11. And Be it Enacted, and declared by the Authority aforeſaid, That an *Habeas Corpus* according to the true Intent and meaning of this Act, may be directed, and Run into any County *Palatine*, the Cinque ports or other priviledged places within the Kingdom of *Engl.* Dominion of *Wales*, or Town of *Berwick* upon *Tweed*, and the Iſles of *Jerſey*, or *Guernſey*; any Law or Uſage to the Contrary notwithſtanding.

12. And for preventing *Illegal* Impriſonments in priſons beyond ſeas (2.) Be it further Enacted by the Authority aforeſaid, That no ſubject of this Realm that now is, or hereafter ſhall be an Inhabitant or Reſiant of this Kingdom of *England*, Dominion of *Wales*, or

or Town of *Berwick* upon *Tweed*, ſhall or may be ſent priſoner into *Scotland*, *Ireland*, *Jerſey*, *Guernſey*, *Tangier*, or into any parts, Garriſons, Iſlands, or places beyond the ſeas, which are, or at any time hereafter, ſhall be within or without the Dominions of His Majeſty, His heirs or ſucceſſours, (3.) And that every ſuch Impriſonment is hereby Enacted and adjudged to be *Illegal*; (4.) and that, If any of the ſaid ſubjects now is, or hereafter ſhall be ſo Impriſoned, every ſuch perſon and perſons ſo Impriſoned, ſhall and may for every ſuch Impriſonment, maintain by vertue of this Act, an Action or Actions of falſe Impriſonment, in any of his Majeſties Courts of Record, againſt the perſon or perſons by whom he or ſhe ſhall be ſo Committed, detained, Impriſoned, ſent priſoner, or Tranſported Contrary to the true meaning of this Act, and againſt all or any perſon or perſons that ſhall frame, Contrive, Write, Seal, or Counterſign any Warrant or Writing for ſuch Commitment, detainer, Impriſonment, or Tranſportation, or ſhall be Adviſing, Aiding, or Aſſiſting in the ſame, or any of them; (5,) And the plaintiff in every ſuch Action ſhall have Judgment to Recover his Treble Coſts, beſides damages; which damages ſo to be Given, ſhall not be leſs than five hundred pounds; (6.) in which Action, no delay, ſtay or ſtop of proceeding, by Rule, order, or Commaud, nor no Injunction, protection, or priviledge whatſoever, nor any more than one Imparlance ſhall be allowed, Excepting ſuch Rule of the Court wherein the Action ſhall depend, made in open Court, as ſhall be thought in Juſtice neceſſary, for ſpecial cauſe to be Expreſſed in the ſaid Rule; (7.) And the perſon or perſons who ſhall Knowingly Frame, Contrive, write, ſeal or Counterſign any Warrant for ſuch Commitment, detainer, or Tranſportation, or ſhall ſo Commit, detain, Impriſon, or Tranſport any perſon or perſons Contrary to this Act, or be any waies Adviſing, aiding or Aſſiſting therein being Lawfully Con-

victed thereof, ſhall be diſabled from thenceforth to Bear any Office of Truſt or Profit within the ſaid Realm of *England*, Dominion of *Wales*, or Town of *Berwick* upon *Tweed*, or any of the Iſlands, Territories or Dominions thereunto Belonging. (8.) And ſhall Incur and ſuſtain the pains, Penalties and Forfeitures Limited, ordained, and provided in and by the ſtatute of Proviſion and Premunire, made in the ſixteenth year of King *Richard* the Second. (9.) And be incapaple of any pardon from the King, His Heirs or Succeſſours, of the ſaid Forfeitures, Loſſes, or diſabilities, or any of them.

13. Provided alwaies, That nothing in this Act extend to give Benefit to any perſon who ſhall by Contract in Writing agree with any Merchant, or Owner, of any plantation, or other perſon whatſoever, to be tranſported to any parts beyond the Seas, and receive Earneſt upon ſuch Agreement, although that afterwards ſuch perſon ſhall Renounce ſuch Contract.

14. Provided alwaies, and be it Enacted, That If any perſon or perſons Lawfully Convicted of any Felony, ſhall in open Court pray to be Tranſported beyond the ſeas, and the Court ſhall think fit to leave him or them in priſon, for that purpoſe ſuch perſon or perſons may be Tranſported into any parts beyond the ſeas; This Act or any thing therein Contained to the contrary notwithſtanding.

15. Provided alſo, and be it Enacted, That nothing herein Contained, ſhall be deemed, Conſtrued, or taken to Extend to the Impriſonment of any perſon before to firſt day of *June*, one thouſand ſix hundred ſeventy and nine, or to any thing Adviſed, procured, or otherwiſe done, Relating to ſuch Impriſonment; Any thing herein Contained to the Contrary notwithſtanding.

16. Provided alſo, That If any perſon or perſons at any time Reſiant in this Realm, ſhall have committed

any

any Capital Offence in *Scotl.* or *Ireland*, or any of the Iſlands, or Foreign Plantations of the King His Heirs or Succeſſours, where he or ſhe, ought to be Tryed for ſuch Offence, ſuch perſon or perſons may be ſent to ſuch place there to Receive ſuch Tryal, in ſuch manner as the ſame might have been uſed before the making of this Act; any thing herein contained to the contrary notwithſtanding.

17. Provided alwayes, and be it Enacted, That no perſon or perſons ſhall be ſued, Impleaded, Moleſted or Troubled for any Offence againſt this Act, unleſs the party offending be Sued or Impleaded for the ſame within two years at the moſt after ſuch time wherein the Offence ſhall be Committed in Caſe the party Grieved ſhall not be then in Priſon, and if he ſhall be in Priſon, then within the ſpace of two years after the deceaſe of the Perſon Impriſoned, or his, or her delivery out of Priſon, which ſhall firſt happen.

18. And to the intent no perſon may Avoyd his Tryal at the Aſſizes, or General Gaol delivery, by procuring his Removal before the Aſſizes at ſuch time as he cannot be brought back to receive his Tryal there; (2.) Be it Enacted, That after the Aſſizes proclaimed for that County where the Priſoner is detained, no perſon ſhall be Removed from the common Gaol upon any *Habeas Corpus* granted in purſuance of this Act, but upon any ſuch *Habeas Corpus*, ſhall be brought before the Judge of Aſſize in open Court, who is thereupon to do what to Juſtice ſhall appertain.

19. Provided nevertheleſs, That after the Aſſizes are Ended, any perſon or perſons detained may have his or her *Habeas Corpus* according to the direction and Intention of this Act.

20. And be it alſo Enacted by the Authority aforeſaid, That if any Information, Suit, or Action ſhall be Brought or Exhibited againſt any perſon or perſons for any Offence committed, or to be committed againſt the form of this Law, it ſhall be Lawful for ſuch defen-

dants to plead the General Iſſue, that they are not Guilty, or that they own nothing, and to give ſuch ſpecial matter in Evidence to the Jury that ſhall Try the ſame, which matter being pleaded, had been good & ſufficient in Law to have diſcharged the ſaid Defendant or Defendants againſt the ſaid Information, Suit or Action, & the ſaid matter ſhall be then as available to him or them, to all Intents and purpoſes, as if he or they had ſufficiently pleaded, ſet forth or Alledged the ſame matter in Bar or Diſcharge of ſuch information, Suit or Action.

21. And becauſe many times perſons charged with petty Treaſon or Felony, or as Acceſſaries thereunto are Committed upon ſuſpition only, whereupon they are Bailable or not according as the Circumſtances making out that ſuſpition are more or leſs weighty, which are beſt known to the Juſtices of Peace that committed the perſons, and have the Examinations before them, or to other Juſtices of the Peace in the County: (2.) Be it therefore Enacted, That where any perſon ſhall appear to be Committed by any Judge, or Juſtice of the Peace, and charged as Acceſſary before the Fact, to any petty Treaſon or Felony, or upon ſuſpicion thereof, or with ſuſpicion of petty Treaſon or Felony, which petty Treaſon or Felony ſhall be plainly & ſpecially expreſſed in the Warrant of Commitment, that ſuch perſon ſhall not be Removed or Bailed by vertue of this Act, or in any other manner than they might have been before the making of this Act.

The Comment.

THere are three things, which the Law of *England* (which is a Law of Mercy) principally Regards and taketh care of, *viz. Life*, *Liberty* and *Eſtate*. Next to a man's Life, the neareſt thing that concerns him, is *freedom of his perſon*, For indeed what is Impriſonment, but a kind of *Civil Death?* Therefore ſaith *Forteſcue Cap.* 42. *Angliæ Jura in omni Caſu Libertati dant favorem.* The Laws of *England* do in **All Caſes** favour Liberty. Touching

Touching *Commitments*, and what is Required to make a *Legal Mittimus*, ſee before Pag. 27.

The Writ of *Habeas Corpus* is a Remedy given by the common Law for ſuch as were unjuſtly detained in cuſtody, to procure their Liberty: But before this ſtatute, was Rendred far leſs uſeful than it ought to be partly by the Judges, pretending a power to Grant, or deny the ſaid Writ at their pleaſure, in many caſes, and Eſpecially by the Ill practiſes of Sheriffs and Gaolers, by putting the priſoner to the charge and trouble of an *Alias* and *pluries* (that is a ſecond and third Writ, before they would obey the firſt, for there was no penalty till the Third) and then at laſt the Judges would oft-times Alleadge, That they could not take Bail, becauſe the party was a *priſoner of State*, &c. Therefore to Remedy all thoſe miſchiefs; This *moſt wholſome Law* was provided. Which we ſhall briefly Endeavour to Divide into its ſeveral Branches, and Explain it to the meaneſt Capacities, ſince no Man is ſure but one time or other, he may have occaſion to make uſe of it.

This Act concerneth either firſt, perſons committed for ſome other Criminal, or ſuppoſed Criminal matter, beſides *Treaſon* or *Felony*, and theſe are to have an *Habeas Corpus* Immediately; 2ly. ſuch who in their *Mittimus* are charged with *Treaſon* or *Felony*, & theſe ſhall have the benefit of the ſaid Writ after the time herein Limited. 1ſt. If any Gaoler or Under-Keeper ſhall not deliver a *true Copy of the Mittimus* within *6 hours* after the priſoner demands it, the Head-Gaoler or Keeper forfeits to the priſoner for the firſt Offence 100*l.* for the ſecond Offence 200*l.* and loſes his place. Nor is there any *Fee* to be paid for the ſame, the Turn-key muſt deliver it at his peril. And note if the priſoner ſhould be lockt up, or none ſuffered to come at him, any friend of his may demand the ſame on his behalf.

2. Whatever the Criminal matter be, If Treaſon or Felony be not Expreſly charged, any perſon

on the priſoners behalf, carrying ſuch *true Copy* of the Commitment to the Lord Chancellor, or *any one* of the Judges, or Barons of the Exchequer, or upon Oath made that a Copy was demanded and denied, he ſhall Grant an *Habeas Corpus*, or forfeit 500*l.* to the priſoner; But note, the Requeſt muſt be made to ſuch Judge *in Writing*, and Atteſted by two witneſſes.

3. If the Sheriff or Gaoler do not carry up the priſoner and Return the true cauſes of his detainour, within *three* days, If under twenty miles diſtance, or within *ten daies* if above twenty, and under an hundred miles, or within *twenty daies* if above an hundred miles, he forfeits 500*l.* to the priſoner.

Note the priſoner muſt pay the *Charges* of his carrying up, and the Judge when he Grants the Writ, may order how much, but it muſt not be above 12*d.* a mile.

If upon the Return of ſuch *Habeas Corpus*, it appear the priſoner is not charged with *Treaſon* or *Felony*, *ſpecially and plainly Expreſſed*, or for ſuch matters, as by Law are *not Bailable*, the Judge ſhall diſcharge the priſoner upon Bail.

4. If a perſon once ſo Bailed out, ſhall again be Impriſoned for the ſame Offence, thoſe that do it forfeit 500*l.*

5. If there be High Treaſon or Felony *plainly* and *ſpecially Expreſſed* [That is, not only Generally, for Treaſon or Felony, but Treaſon in conſpiring to *kill the King*, or in *Counterfeiting the King's Coin*, or Felony, for *ſtealing the goods* of ſuch an one to ſuch a value, *&c.*] Then the Priſoner cannot have his *Habeas Corpus*, till firſt he has on the firſt week of the Term, or firſt day of Seſſions of *Oyer* and *Terminer*, or General Gaol-delivery petitioned in open Court to be brought to his *Tryal*; and then if he be not brought to Tryal the next Term, or Seſſions following, on the *laſt day* thereof, he ſhall be *Bailed*; and if not Indicted the ſecond Term or Seſſions, ſhall be diſcharged.

6. This

6. This Act extends to *all places* within *England* and *Wales*; the *Tower* cannot be ſuppoſed to be exempted, nor *Windſor Caſtle*, nor any ſuch Royal Forts; for the words are general: And beſides, there is a ſpecial Act of Parliament, that unites the King's Caſtles to the Counties wherein they ſtand; there having been it ſeems ſome pretenſions and ill practices to hold them diſtinct, that therein they might detain men priſoners againſt Law, and not admit any *Writ* to enlarge them. For Remedy whereof it was thus Enacted;

Anno 13. *Rich. Secundi.*

Item. *It is Ordained and Aſſented, That the King's Caſtles and Gaols which were wont to be Joyned to the Bodies of the Counties, and be now Severed, ſhall be Rejoyned to the ſame Counties.*

Laſtly, No perſon ſhall be ſent Priſoner out of *England* or *Wales*, into *Scotland*, *Ireland*, *Jerſey*, *Guernſey*, *Tangier*, or any other place beyond the Seas.

The Proviſo's and other Clauſes of this Act may be eaſily apprehended by the meaneſt capacities.

AND, As the Law provides thus for our *Liberty*, ſo it takes care, that thoſe that *are in Cuſtody*, ſhall not be abuſed or oppreſſed; to which purpoſe I ſhall here inſert ſo much as is material & neceſſary to be known by all perſons, who are ſo unhappy as to be priſoners, out of the Statute of the 22d. and 23d. *Car.* 2. *Cap.* 20. The words wereof are as follows:

'WHEREAS Perſons that are under Arreſts, or 'committed to the cuſtody of Sheriffs, Bailiffs, Gaolers, 'Keepers of Priſons, or Gaols, are much abuſed and 'wronged by Extorting of great Fees, Rewards, and 'other Exactions, and put to great Expences under 'pretences of favour, or otherwiſe, whereby they are 'greatly Oppreſſed, and many times Ruined in their 'Eſtates. (2.) For Remedy thereof, Be it Enacted 'by the Authority aforeſaid, That if any Under-She-'riff, Bailiff, Serjeant at Mace, or other Officer or 'Miniſter

'Minister whatsoever, shall at any time or times 'hereafter have in his or their Custody, any person 'or persons by vertue or colour of any Writ, Process, 'or other Warrant whatsoever, it shall not be lawful 'for such Officer or Officers, to convey or carry, or 'cause to be conveyed or carried the said person or 'persons to any Tavern, Ale-House, or other publick 'Victualling or Drinking-House, without the free and 'voluntary consent of the said person or persons, so as 'to charge such Prisoner with any sum of Money for 'any Wine, Beer, Ale, Victuals, Tobacco, or any 'other things whatsoever, but what the said person 'or persons shall call for, of his, her, or their own 'accord, (3.) And shall not demand, take or re-'ceive, or cause to be demanded, taken or received, 'directly or indirectly, any other, or greater Sum or 'Sums than what by Law ought to be taken or de-'manded for such Arrest, taking, or waiting (until 'such person or persons shall have procured an Ap-'pearance, found Bail, agreed with his or their Ad-'versaries, or be sent to the proper Gaol belonging to 'the County, City, Town or Place where such Ar-'rest or taking shall be,) (4.) Nor take and Exact 'any other Reward or Gratuity for so keeping the 'said person or persons out of the Gaol or Prison, 'than what he, she or they shall or will of his, her, or 'their own accord, voluntarily and freely give. '(5.) Nor take, nor receive any other, or greater 'Sum or Sums for each nights Lodging, or other Ex-'pences, than what is reasonable and fitting in 'such cases, or shall be so adjudged by the next 'Justice of the Peace, or at the next Quarter-Ses-'sions. (6.) And shall not cause or procure the said 'person or persons, to pay for any other Wine, Beer, 'Ale, Victuals, Tobacco, or other things, than what 'the said person or persons shall voluntarily, freely, 'and particularly call for.

'And that every Under-Sheriff, Gaoler, Keeper of

'of Priſon or Gaol, and every perſon or perſons 'whatſoever, to whoſe Cuſtody any perſon or per-'ſons ſhall be delivered or commited, by virtue of 'any Writ of Proceſs, or any pretence whatſoever, 'ſhall permit and ſuffer the ſaid perſon or perſons, at 'his and their will and pleaſure, to ſend for, and 'have any Beer, Ale, Victuals, and other neceſſa-'ry Food, where, and from whence they pleaſe; 'and alſo to have and uſe ſuch Bedding, Linnen, and 'other things, as the ſaid perſon or perſons ſhall 'think fit, without any purloyning, detaining or 'paying for the ſame, or any part thereof; nor ſhall 'demand, take or receive of the ſaid perſon or per-'ſons, any other, or greater Fee or Fees whatſo-'ever, for his, her, or their Commitment, Releaſe or 'Diſcharge; or for his, her, or their Chamber-Rent, 'than what is allowable by Law, untill the ſame ſhall 'be ſettled by three Juſtices of the Peace, whereof one 'to be of the *Quorum*, of each particular County, Ci-'ty and Town Corporate, in their ſeveral Precincts; 'and for the City of *London*, and Counties of *Middle-'ſex* and *Surrey*, the two Lord Chief Juſtices of the '*Kings's-Bench* and *Common-Pleas*, and the Lord Chief 'Baron, or any two of them, and the Juſtices of the 'Peace of the ſame, in their ſeveral Juriſdictions.

'And likewiſe that the ſaid Lord Chief Juſtice, 'Lord Chief Baron, and Juſtices of the Peace in their 'ſeveral Juriſdictions, and all Commiſſioners for 'Charitable Uſes, do their beſt Endeavours, and Di-'ligence to Examine, and finde out the ſevaral Lega-'cies, Gifts and Bequeſts beſtowed and given for the 'Benefit and Advantage of the Poor Priſoners for 'Debt, in the ſeveral Gaols and Priſons in this King-'dom, and to ſend for any Deeds, Wills, Writings, 'and Books of Accompts whatſoever; and any per-'ſon or perſons concerned therein, and to Examine 'them upon Oath, to make true diſcovery thereof '(which they have full Power and Authority hereby

'to

'to do) and the ſame ſo found out and aſcertained, 'to order and ſettle in ſome manner and way, that 'the Priſoners hereafter may not be defrauded, but 'Receive the full benefit thereof, according to the 'true intent of the Donors.

'And that theſe Accounts of the ſeveral Legacies, 'Gifts and Bequeſts, given and beſtowed upon the 'ſeveral Priſoners for Debt, within this Kingdom, 'and the ſeveral Rates of Fees, and the future Go-'vernment of Priſons, be ſigned and confirmed by 'the Lord Chief Juſtices, and Lord Chief Baron, or 'any two of them for the time being, and the Juſtices 'of the Peace in *London*, *Middleſex* and *Surrey*; and 'by the Judges for the ſeveral Circuits, and Juſtices of 'the Peace for the time being, in their ſeveral Pre-'cincts, and fairly written and hung up in a Table in 'every Gaol and Priſon, before the firſt day of *No-'vember*, 1671. and likewiſe be Regiſtred by each, 'and every Clerk of the Peace within his or their 'particular Juriſdiction: And after ſuch Eſtabliſhment, 'no other or greater Fee or Fees than ſhall be ſo 'Eſtabliſhed, ſhall be Demanded or Received.

'And whereas it is become the common practice 'of Gaolers, and Keepers of *Newgate*, the *Gate-houſe* 'at *Weſtminſter*, and ſundry other Gaols and Priſons, 'to Lodge together in one Room, or Chamber and 'Bed, Priſoners for Debt, and Felons, whereby ma-'ny times honeſt Gentlemen, Trades-men and 'others, Priſoners for Debt, are diſturbed and hin-'dered in the night-time from their natural Reſt, by 'reaſon of their Fetters and Irons, and otherwiſe 'much offended and troubled by their lewd and pro-'phane Language and Diſcourſes, with moſt horrid 'Curſing and Swearing (much accuſtomed to ſuch 'perſons;) (2.) Be it Enacted by the Authority 'aforeſaid, That it ſhall not be lawful hereafter for 'any Sheriff, Gaoler, or Keeper of any Gaol or Pri-'ſon, to put, keep or Lodge Priſoners for Debt, and

'Felons

'Felons together in one Room or Chamber; but that 'they ſhall be put, kept, and Lodged ſeparate and 'apart one from another, in diſtinct Rooms, (3.) Upon 'pain that he, ſhe, or they which ſhall offend againſt 'this Act, or the true Intent and meaning thereof, or 'any part thereof, ſhall forfeit and loſe his or her 'Office, Place or Imployment, and ſhall forfeit treble 'damages to the party grieved, to be Recovered by 'vertue of this Act, any Law, Statute, Uſage or Cu-'ſtom to the contrary in any wiſe notwithſtanding.

And to the End that Engliſh-men may more entirely enjoy their due Freedoms, the prudence of our Legiſlators have thought fit from time to time to Remove Encroachments thereupon, though under pretence of Juriſdictions and Courts of Juſtice; and to prohibit any Exorbitant Arbitrary Power for the future, but that all things may be left to the calm and equal proceedings of Law; and that moſt excellent Method of Trial by *Juries*, one of the principal Bulwarks of *England*'s Liberties. For an Inſtance hereof, take the Act following.

An Act for Regulating of the Privy Council, and for taking away the Court commonly called the Star-Chamber.

'WHereas by the Great Charter many 'times confirmed in Parliament, it is 'Enacted, That no Freeman ſhall be taken or Im-'priſoned, or Diſſeized of his Freehold or Liberties, 'or Free Cuſtoms, or be Outlawed or Exiled, or other-'wiſe deſtroyed; and that the King will not paſs 'upon him, or condemn him, but by lawful Judg-'ment of his Peers, or by the Law of the Land: '(2.) And by another Statute made in the fifth 'year of the Reign of King *Edward*, it is Enacted, 'That no man ſhall be Attached by any Accuſation, 'nor fore-judged of Life or Limb, nor his Lands, 'Tenements, Goods nor Chattels ſeized into the 'King's

'King's Hands againſt the Form of the Great Char-
'ter, and the Law of the Land: (3.) And by ano-
'ther Statute made in the five and twentieth year of
'the Reign of the ſame King *Edward* the third, it
'is Accorded, Aſſented, and Eſtabliſhed, That none
'ſhall be taken by Petition, or Suggeſtion made
'to the King, or to his Council, unleſs it be by In-
'dictment or Preſentment of good and lawful peo-
'ple of the ſame Neighbourhood, where ſuch Deeds
'be done, in due manner, or by Proceſs made by
'Writ Original at the Common Law; and that none
'be put out of his Franchiſe or Freehold, unleſs he
'be duly brought in to Anſwer, and fore-judged of
'the ſame by the courſe of the Law: And if any
'thing be done againſt the ſame, it ſhall be Redreſ-
'ſed, and holden for none: (4.) And by another
'Statute made in the eight and twentieth year of the
'Reign of the ſame King *Edward* the Third, it is
'amongſt other things Enacted, That no Man of
'what Eſtate or Condition ſoever he be, ſhall be put
'out of his Lands or Tenements, nor taken, nor
'Impriſoned, nor Diſ-inherited, without being
'brought in to Anſwer by due Proceſs of Law:
'(5.) And by another Statute made in the two and
'fortieth year of the Reign of the ſaid King *Edward*
'the Third, it is Enacted, That no Man be put to
'Anſwer without Preſentment before Juſtices, or
'matter of Record, or by due Proceſs and Writ Ori-
'ginal, according to the Old Law of the Land; and if
'any thing be done to the contrary, it ſhall be void
'in Law, and holden for Errour: (6.) And by ano-
'ther Statute in the ſix and thirtieth year of
'the Reign of the ſame King *Edward* the Third, it is
'amongſt other things Enacted, That all Pleas
'which ſhall be pleaded in any Courts before any of
'the King's Juſtices, or in his other places, or before
'any of his other Miniſters, or in the Courts and
'places of any other Lords within the Realm, ſhall

be

'be Entred and Enrolled in Latine: (7.) And 'whereas by the Statute made in the third year of 'King *Henry* the Seventh, Power is given to the Chan-'cellor, the Lord Treaſurer of *England*, for the time 'being, and the Keeper of the Kings Privy Seal, or 'two of them, calling unto them a Biſhop, and a 'Temporal Lord of the King's Moſt Honourable 'Council, and the Two Chief Juſtices of the King's 'Bench and Common Pleas for the time being, or 'other two Juſtices in their Abſence, to proceed as 'in that Act is expreſſed, for the puniſhment of ſome 'particular Offences therein mentioned: (8.) And 'by the Statute made in the one and twentyeth year 'of King *Henry* the Eighth, the Preſident of the Coun-'cil is Aſſociated to joyn with the Lord Chancellour, 'and other Judges in the ſaid Statute of the Third of '*Henry* the Seventh mentioned: (9.) But the ſaid 'Judges have not kept themſelves to the points li-'mited by the ſaid Statute, but have undertaken to 'puniſh where no Law doth warrant, and to make 'Decrees for things having no ſuch Authority, and to 'Inflict heavier puniſhments than by any Law is 'warranted.

2. 'And foraſmuch as all matters Examinable or 'Determinable before the ſaid Judges, or in the Court 'commonly called the *Star-Chamber*, many have their 'proper Remedy and Addreſs, & their due puniſhment 'and correction by the Common Law of the Land, 'and in the ordinary courſe of Juſtice elſewhere: '(2.) And foraſmuch as the Reaſons and Motives 'inducing the Erection and Continuance of that 'Court do now ceaſe; (3.) And the Proceedings, 'Cenſures and Decrees of that Court, have by Ex-'perience been found to be an Intollerable Burthen 'to the Subject, and the means to Introduce an Ar-'bitrary Power and Government: (4.) And foraſmuch 'as the Council-Table hath of late times aſſumed 'unto it ſelf a Power to Intermeddle in Civil, and 'matters

'matters only of private Intereſt between Party and 'Party, & have adventured to determin of the Eſtates 'and Liberties of the Subjects, contrary to the Law of 'the Land, and the Rights and Priviledges of the Sub-'ject, by which great and manifold miſchiefs and in-'conveniences have ariſen and happened, and much 'Incertainty by means of ſuch proceedings hath been 'conceived concerning mens Rights and Eſtates; for 'ſettling whereof, and preventing the like in time 'to come;

'3. Be it Ordained and Enacted by the Authority of 'this preſent Parliament, That the ſaid Court com-'monly called the Star-Chamber, and all Juriſdicti-'on, Power and Authority belonging unto, or Exer-'ciſed in the ſame Court, or by any the Judges, Of-'ficers or Miniſters thereof, be from the firſt day of '*Auguſt*, in the Year of our Lord God, one thouſand 'ſix hundred forty and one clearly and abſolutely diſ-'ſolved, taken away and determined; (2.) And that 'from the ſaid firſt day of *Auguſt*, neither the Lord 'Chancellour or Keeper of the Great Seal of *England*, 'the Lord Treaſurer of *England*, the Keeper of the 'Kings privy Seal, or Preſident of the Council, nor 'any Biſhop, Temporal Lord, privy Councellour, or 'Judge, or Juſtice whatſoever, ſhall have any power 'or Authority to hear, examine or determine any mat-'ter or thing whatſoever in the ſaid Court commonly called the Star-Chamber, or to make, pronounce, 'or deliver any Judgment, Sentence, Order or Decree; 'or to do any Judicial or Miniſterial Act in the ſaid 'Court: (3.) And that all and every Act and Acts of 'Parliament, and all and every Article, clauſe, and 'Sentence in them, and every of them, by which any 'Juriſdiction, Power or Authority is given, Limited 'or appointed, unto the ſaid Court commonly called 'the Star-Chamber, or unto all, or any the Judges, Of-'ficers or Miniſters thereof, or for any Proceedings 'to be had or made in the ſaid Court, or for any mat-

'ter

'ter or thing to be drawn into queſtion, Examined or 'determined there, ſhall for ſo much as concerneth 'the ſaid Court of Star-Chamber, and the power and 'Authority thereby Given unto it, be from the ſaid 'firſt day of *Auguſt* Repealed and Abſolutely Revok-'ed and made void.

4. 'And be it likewiſe Enacted, That the 'like Juriſdiction now uſed and Exerciſed in the 'Court before the Preſident and Council in the *Mar-'ches of Wales*; (2.) and alſo in the Court before the 'Preſident and Council Eſtabliſhed in the Northren 'parts; (3.) and alſo in the Court commonly called, 'the Court of the Dutchy of *Lancaſter*, held before 'the Chancellour and Council of that Court; (4.) 'And alſo in the Court of Exchequer of the County 'Palatine of *Cheſter*, held before the Chamberlain 'and Council of that Court; (5.) The like Juriſ-'diction being Exerciſed there, ſhall from the ſaid 'firſt day of *Auguſt*, one thouſand ſix hundred, forty 'and one, be alſo Repealed and Abſolutely Revoked, 'and made void, any Law, preſcription, Cuſtom or 'Uſage, or the ſaid ſtatute made in the third year of 'King *Henry* the Seventh, or the ſtatute made the 'one and twentieth of *Henry* the Eighth, or any Act or 'Acts of Parliament heretofore had or made, to the 'Contrary thereof in any wiſe notwithſtanding: (6.) 'And that from henceforth no Court, Council, or 'place of Judicature ſhall be Erected, Ordained, con-'ſtituted or appointed within this Realm, of *England*, 'or Dominion of *Wales*, which ſhall have, uſe or Ex-'erciſe, the ſame, or the like Juriſdiction, as is or 'hath been uſed, practiſed, or Exerciſed in the ſaid 'Court of Star-Chamber.

'5. Be it likewiſe declared and Enacted by Au-'thority of this preſent Parliament, That neither His 'Majeſty, nor his Privy Council, have or ought to 'have any Juriſdiction, Power or Authority by *Eng-'liſh* Bill, Petition, Articles, Libel, or any other Arbi-

'trary

'trary way whatſoever, to Examine or draw into 'queſtion, determine or diſpoſe of the Lands, Tene-'ments, Hereditaments, goods, or Chattels of any of the 'Subjects of this Kingdom; but that the ſame ought 'to be tryed and determined in the ordinary Courts 'of Juſtice, and by the ordinary courſe of the Law.

6. 'And be it further provided and Enacted, That 'If any Lord Chancellor, or Keeper of the Great Seal 'of *England*, Lord Treaſurer, Keeper of the Kings Pri-'vy Seal, Preſident of the Council, Biſhop, Temporal 'Lord, Privy Councillor, Judge or Juſtice whatſo-'ever, ſhall offend, or do any thing contrary to the 'purport, true intent and meaning of this Law, Then 'he or they ſhall for ſuch offence forfeit the ſum of 'five hundred pounds of lawful Money of *England*, 'unto any party grieved, his Executors or Admini-'ſtrators, who ſhall really proſecute for the ſame, 'and firſt obtain Judgment thereupon, to be Reco-'vered in any Court of Record at *Weſtminſter*, by 'Action of Debt, Bill, Plaint, or Information, wherein 'no Eſſoign, Protection, Wager of Law, Aid-prayer, 'Priviledge, Injunction or Order of Reſtraint, ſhall 'be in any wiſe prayed, granted or allowed; nor any 'more than one Imparlance: (2.) And if any perſon 'againſt whom any ſuch Judgment or Recovery ſhall 'be had as aforeſaid, ſhall after ſuch Judgment or 'Recovery, offend again in the ſame, then he or they 'for ſuch offence ſhall forfeit the Sum of one thou-'ſand pounds of lawful Money of *England*, unto any 'party grieved, his Executors or Adminiſtrators, who 'ſhall really proſecute for the ſame, and firſt obtain 'Judgment thereupon, to be Recovered in any Court 'of Record at *Weſtminſter*, by Action of Dept, Bill, 'Plaint, or Information, in which no Eſſoign, Pro-'tection, Wager of Law, Aid-prayer, Priviledge, In-'junction or Order of Reſtraint, ſhall be in any wiſe 'prayed, granted or allowed; nor any more than 'one Imparlance: (3.) And if any perſon againſt

'whom

whom any ſuch ſecond Judgment or Recovery ſhall be had as aforeſaid, ſhall after ſuch Judgment or Recovery, offend again in the ſame kind, and ſhall be thereof duly convicted by Indictment, Information, or any other lawful way or means, that ſuch perſon ſo convicted, ſhall be from thenceforth 'diſabled, and become by virtue of this Act Incapable, *ipſo facto*, to Bear his and their ſaid Office 'and Offices Reſpectively; (4.) And ſhall be likewiſe diſabled to make any Gift, Grant, Conveyance, 'or other Diſpoſition of any of his Lands, Tenements, 'Hereditaments, Goods or Chattels; or to take any 'Benefit of any Gift, Conveyance or Legacy to his 'own uſe.

7. 'And every Perſon ſo offending ſhall likewiſe 'forfeit and loſe to the party grieved, by any thing 'done contrary to the true intent and meaning of 'this Law, his treble Damages, which he ſhall ſuſtain 'and be put unto, by means or occaſion of any ſuch 'Act or thing done, the ſame to be Recovered in any 'of His Majeſties Courts of Record at *Weſtminſter*, by 'Action of Debt, Bill, Plaint, or Information, where-'in no Eſſoign, Protection, Wager of Law, Aid-'prayer, Priviledge, Injunction, or Order of Reſtraint, 'ſhall be in any wiſe prayed, granted or allowed, nor 'any more than one Imparlance.

8. 'And be it alſo provided and Enacted, That 'if any perſon ſhall hereafter be Committed, Re-'ſtrained of his Liberty, or ſuffer Impriſonment, by 'the Order or Decree of any ſuch Court of Star-'Chamber, or other Court aforeſaid, now, or at any 'time hereafter, having, or pretending to have the 'ſame or like Juriſdiction, Power, or Authority to 'Commit or Impriſon as aforeſaid: (2.) Or by the 'Command or Warrant of the King's Majeſty, His 'Heirs and Succeſſors in their own Perſon, or by the 'Command or Warrant of the Council-board; or of 'any of the Lords or others of His Majeſties Privy-

'Council

'Council: (3.) That in every ſuch Caſe, every per-
'ſon ſo Committed, Reſtrained of his Liberty, or ſuf-
'fering Impriſonment, upon demand or motion
'made by his Council, or other Imployed by him
'for that purpoſe, unto the Judges of the Court of
'King's-Bench, or Common-Pleas in open Court,
'ſhall without delay, upon any pretence whatſoever,
'for the Ordinary Fees uſually paid for the ſame,
'have forthwith granted unto him a Writ of *Habeas*
'*Corpus*, to be directed generally unto all and every
'Sheriffs, Gaoler, Miniſter, Officer, or other perſon in
'whoſe Cuſtody the perſon Committed or Reſtrain-
'ed ſhall be: (4.) And the Sheriffs, Gaoler, Mini-
'ſter, Officer, or other perſon, in whoſe Cuſtody the
'party ſo Committed or Reſtrained ſhall be, ſhall
'at the Return of the ſaid Writ, and according to
'the command thereof, upon due and convenient
'notice thereof given unto him, at the Charge of
'the party who requireth or procureth ſuch Writ,
'and upon Security by his own Bond given, to pay
'the Charge of carrying back the Priſoner, if he ſhall
'be Remanded by the Court to which he ſhall be
'brought; as in like caſes hath been uſed, ſuch Char-
'ges of bringing up, and carrying back the Priſoner, to
'be alwaies Ordered by the Court, if any difference
'ſhall ariſe thereabout, bring or cauſe to be brought
'the Body of the ſaid Party ſo Committed or Re-
'ſtrained unto, and before the Judges or Juſtices of
'the ſaid Court, from whence the ſame Writ ſhall
'Iſſue, in open Court: (5.) And ſhall then likewiſe
'certifie the true Cauſe of ſuch his Detainour or Im-
'priſonment, and thereupon the Court within three
'Court-daies after ſuch Return, made and delivered
'in open Court, ſhall proceed to Examine and De-
'termine, whether the Cauſe of ſuch Commitment
'appearing upon the ſaid Return, be Juſt and Legal,
'or not, and ſhall thereupon do what to Juſtice
'ſhall appertain, either by Delivering, Bailing, or

'Remand-

Remanding the Priſoner: (6.) And if any thing ſhall be otherwiſe wilfully done, or omitted to be done by any Judge, Juſtice, Officer, or other Perſon aforementioned, contrary to the direction and true meaning hereof, then ſuch perſon ſo offending ſhall forfeit to the party grieved, his treble Damages, to be Recovered by ſuch means, and in ſuch manner as is formerly in this Act limited and appointed for the like penalty to be Sued for and Recovered.

9. 'Provided alwayes, and be it Enacted, That this Act, and the ſeveral Clauſes therein contained, ſhall be taken and Expounded to Extend only to the Court of Star-Chamber: (2.) And to the ſaid Courts holden before the Preſident and Council in the Marches of *Wales*: (3.) And before the Preſident and Council in the Northern parts: (4.) And alſo to the Court commonly called the Court of the *Dutchy of Lancaſter*, holden before the Chancellor and Council of that Court: (5.) And alſo in the Court of Exchequer, of the County Palatine of *Cheſter*, held before the Chamberlain, and Council of that Court: (6.) And to all Courts of like Juriſdiction to be hereafter Erected, Ordained, Conſtituted, or Appointed as aforeſaid; and to the Warrants and Directions of the Council-board, and to the Commitments, Reſtraints and Impriſonments of any perſon or perſons made, commanded or awarded by the King's Majeſty, His Heirs or Succeſſors in their own Perſon, or by the Lords and others of the Privy-Council, and every one of them.

'And laſtly, Provided and be it Enacted, That no perſon or perſons ſhall be Sued, Impleaded, Moleſted or Troubled for any Offence againſt this preſent Act, unleſs the party ſuppoſed to have ſo Offended ſhall be ſued or Impleaded for the ſame within two years at the moſt after ſuch time, wherein the ſaid Offence ſhall be committed.

The

The Comment.

THE Court of *Star-Chamber* (ſo called, becauſe held in a Chamber at *Weſtminſter*, the Roof of which is garniſht with Golden *Stars*) was not originally Erected, but confirmed and eſtabliſht by the *Stat.* of the 3 *H.*7.*Ca.*1. For there had *before* been ſome ſuch Juriſdiction, as *Cook* obſerves 4. *Inſtit. fo.* 62. yet there is reaſon to believe, That it grew up rather by *Connivance* and Uſurpation, than any due courſe of Law. The Crimes it pretended to puniſh were the Exorbitant Offences of Great Men, (whom Inferiour Judges and Jurors (though they ſhould not) would in reſpect of their Greatneſs be afraid to offend) Bribery, Extortion, Maintenance, Champerty, Imbracery, Forgery, Perjury, Libelling, Challenges, Duels, *&c.* Their proceedings were by *Engliſh* Bill, and Proceſs under the Great Seal; and the puniſhments by them Inflicted were *Fines*, *Impriſonment*, *Pillory*, *Cutting off Ears*, &c. But whatever pretences there were for the ſetting up this Court at firſt, 'tis certain it was made uſe of as a property of Arbitrary Power to *Cruſh* any whom the Ruling *Miniſters* and *Favourites* had a mind to deſtroy; and indeed there were *Three* things in the very nature of this Court, which were deſtructive to the Original Conſtitution of our *Engliſh* Government and Liberties. 1. They proceeded without *Juries*. 2. They pretended to a Power to Examine men upon their *Oaths* touching Crimes by them ſuppoſed to be committed, which is contrary to all Law and Reaſon; For, *Nemo tenetur ſeipſum Accuſare: No man is bound to accuſe himſelf.* 3. The Judges of this Court proceeded by *no known Law or Rules*, but were left at Liberty to Act Arbitrarily, and according to their own pleaſures; whereas the Law of *Engl.* hates to leave to any ſuch an unlimited Power, but as it marks out the ſeveral *ſpecies*

of

of Crimes, such or such an Act shall be *Treason*; this *Felony*, that *petty Larceny*, &c. So it awards certain and positive *punishment*, proportionate to each of them. Therefore this Court being found a *Grievance* to the Subject, was by this Act dissolved and taken away.

And to the intent nothing of the like kind should by any other name be practised for the future, it is declared and Enacted, That the King and His Privy Council shall not question or dispose of the Lands or Goods of any Subjects: And if they do, each Privy Counsellor present forfeits 500*l.* to the party grieved.

A Clause in the Act of 31 *Car.* 2. C. 1.

Whereas by the Laws and Customs of this Realm, the Inhabitants thereof cannot be compelled against their wills to receive Souldiers into their Houses, & to sojourn them there, Be it Declared & Enacted by the Authority aforesaid, That no Officer, Military or Civil, nor any other person whatever shall from henceforth presume to Place, Quarter or Billet any Souldier or Souldiers upon any Subject or Inhabitant of this Realm, of any degree, quality or profession whatever, without his consent; And that it shall and may be lawful for every such Subject and Inhabitant, to refuse to Sojourn or Quarter any Souldier or Souldiers, notwithstanding any Command, Order, Warrant, or Billeting whatever.

HAVING thus recited several of the most material Statutes provided by the care and wisdom of our Ancestors and prudent Legislators for the Guarding and Securing our *English Liberties*, I shall now for the Readers Information, proceed to add certain *other Laws* of another nature; And first give the Reader all the Statutes at this day in force, against *Protestant Dissenters* upon the account of Religion; And secondly, an Abstract of all the Laws against *Papists*.

And in order to the first of these, we begin with a Statute touching the Writ *de Excommunicato Capiendo*, upon which many people have been prosecuted. Which Act is as followeth:

Anno Quinto Reginæ Elizabethæ, *Ca.* 23.
An Act for the due Execution of the Writ De Excommunicato Capiendo.

FOrasmuch as divers persons offending in many great Crimes and Offences appertaining meerly to the Jurisdiction and Determination of the Ecclesiastical Courts and Judges of this Realm, are many times unpunished for lack and want of the good and due Execution of the Writ De Excommunicato Capiendo, *directed to the Sheriff of any County, for the taking and apprehending of any such Offenders:* (2) *The great abuse whereof, as it should seem, hath grown, for that the said Writ is not Returnable in any Court, that might have the Judgment of the well Executing and serving of the said Writ, according to the Contents thereof;* (3) *But hitherto have been left only to the discretion of the Sheriffs and their Deputies, by whose Negligences and Defaults, for the most part, the said Writ is not Executed upon the Offenders as it ought to be.* (4) *By reason whereof, such Offenders be greatly encouraged to continue their sinful and criminous Life, much to the displeasure of Almighty God, and to the great contempt of the Ecclesiastical Laws of this Realm.*

2. *Wherefore, for the redress thereof, Be it enacted by the Queens Most Excellent Majesty, with the assent of the Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, and by the Authority of the same; That from and after the first day of* May *next coming, every Writ of* Excommunicato Capiendo, *that shall be granted and Awarded out of the high Court of Chancery against any person or persons within the Realm of* England, *shall be made in the time of the Term* (2) *And Returnable before the Queen's Highness, Her Heirs and*

and Succeſſors in the Court commonly called the King's Bench, *in the Term next after the* Teſte *of the ſame Writ;* (3) *and the ſame Writ ſhall be made to contain at the leaſt twenty days between the* Teſte *and the Return thereof;* (4) *And after the ſame Writ ſhall be ſo made and ſealed, that then the ſaid Writ ſhall be forthwith brought into the ſaid Court of* King's Bench, *and there in the preſence of the Juſtices, ſhall be opened and delivered of Record to the Sheriffs or other Officer, to whom the ſerving and Execution thereof ſhall appertain, or to his or their Deputy or Deputies.* (5) *And if afterward it ſhall or may appear to the Juſtices of the ſame Court for the time being, that the ſame Writ ſo deliver'd of Record, be not duly returned before them at the day of the return thereof; or that any other Default or Negligence hath been uſed or had, in the not well ſerving and Executing of the ſaid Writ, that then the Juſtices of the ſaid Court ſhall and may by Authority of this Act, Aſſeſs ſuch Amerciament upon the ſaid Sheriff or other Officer in whom ſuch Default ſhall appear, as to the diſcretion of the ſaid Juſtices ſhall be thought meet and convenient; which Amerciament ſo Aſſeſſed, ſhall be Eſtreated into the Court of Exchequer, as other Amerciaments have been uſed.*

3. *And be it further Enacted by the Authority aforeſaid, That the Sheriff or other Officer to whom ſuch Writ of* Excommunicato Capiendo, *or other Proceſs by vertue of this Act, ſhall be directed, ſhall not in any wiſe be compelled to bring the Body of ſuch perſon or perſons, as ſhall be named in the ſaid Writ or Proceſs, into the ſaid Court of the* King's Bench *at the day of the Return thereof;* (2) *But ſhall only Return the ſame Writ and Proceſs thither, with Declaration briefly how and in what manner he hath ſerved and Executed the ſame, to the intent that thereupon the ſaid Juſtices may*

then further therein proceed, according to the Tenour and Effect of this present Act.

4. *And if the said Sheriff or other Officer to whom the Execution of the said Writ shall so appertain, do or shall Return, that the party or parties named in the said Writ, cannot be found within his Bailiwick, that then the said Justices of the* King's-Bench *for the time being, upon every such Return, shall Award one Writ of* Capias *against the said Person or Persons named in the said Writ of* Excommunicato Capiendo; (2.) *Returnable in the same Court in the Term-time, two moneths at least next after the* Teste *thereof;* (3.) *With a Proclamation to be contained within the said Writ of* Capias, *that the Sheriff or other Officers, to whom the said Writ shall be directed, in the full County-Court, or else at the General-Assizes and Goal-delivery to be holden before within the said County, or at a Quarter-Sessions to be holden before the Justices of the Peace within the said County, shall make open Proclamation ten days at the least before the Return, that the party or parties named in the said Writ, shall within six days next after such Proclamation, yield his or their Body or Bodies to the Prison of the said Sheriff or other such Officer, there to remain as a Prisoner according to the Tenor and Effect of the first Writ of* Excommunicato Capiendo, *upon pain or forfeiture of ten pounds:* (4.) *And thereupon after such Proclamation had, and the said six days past and expired, then the said Sheriff or other Officer, to whom such Writ of* Capias *shall be directed, shall make Return of the same Writ of* Capias *into the said Court of the* King's-Bench, *of all that he hath done in the Execution thereof, and whether the party named in the said Writ, have yielded his Body to Prison or not.*

5. *And if upon the Return of the said Sheriff, it shall appear, that the party or parties named in the same*

Writ

Writ of Capias, *or any of them, have not yielded their Bodies to the Goal and Priſon of the ſaid Sheriff, or other Officer, according to the Effect of the ſame Proclamation; that then every ſuch perſon that ſo ſhall make default, ſhall for every ſuch default forfeit to the Queens Highneſs, Her Heirs and Succeſſors, ten pounds. (2.) Which ſhall likewiſe be Eſtreated by the ſaid Juſtices into the ſaid Court of Exchequer, in ſuch manner and form as fines and amerciaments there taxed and aſſeſſed, are uſed to be.*

6. And thereupon the ſaid Juſtices of the *King's-Bench* ſhall alſo award forth another Writ of *Capias* againſt the ſaid perſon or perſons that ſo ſhall be Returned to have made default, with ſuch like Proclamation, as was contained in the firſt *Capias*, and a pain of twenty pounds, to be mentioned in the ſaid ſecond Writ and Proclamation: (2.) And the Sheriff, or other Officer, to whom the ſaid ſecond Writ, of *Capias*, ſhall be ſo directed, ſhall ſerve and Execute the ſaid Writ, in ſuch like manner and form, as before is Expreſſed for the ſerving and Executing of the ſaid firſt Writ of *Capias*. (3.) And if the Sheriff or other Officer ſhall return upon the ſaid ſecond *Capias*, that he hath made the Proclamation according to the Tenour and Effect of the ſame Writ, and that the party hath not yielded his Body to Priſon, according to the Tenour of the ſaid Proclamation; that then the ſaid party that ſo ſhall make default, ſhall for ſuch his contempt and default, forfeit to the Queens Highneſs, Her Heirs and Succeſſors, the Sum of twenty pounds; (4.) Which ſaid Sum of twenty pounds, the ſaid Juſtices of the *King's-Bench* for the time being, ſhall likewiſe cauſe to be Eſtreated into the ſaid Court of Exchequer, in manner and form aforeſaid.

7. *And then the ſaid Juſtices ſhall likewiſe Award forth another Writ of* Capias *againſt the ſaid party, with ſuch* Proclamation *and pain of forfeiture, as*

was contained in the said second Writ of Capias: (2) *and the Sheriff or other Officer to whom the said Third Writ of* Capias *shall be so directed, shall serve and Execute the said Writ of* Capias, *in such like manner and form as before in this Act is expressed and declared, for the serving and Executing of the said first and second Writs of* Capias: (3) *And if the Sheriff or other Officer to whom the Execution of the said third Writ shall appertain, do make Return of the said third Writ of* Capias, *that the Party upon such Proclamation hath not yielded his Body to Prison, according to the Tenour thereof, that then every such Party for every such contempt and default, shall likewise forfeit to the Queen's Majesty, Her Heirs and Successors, other twenty pounds:* (4) *Which Sum of twenty pound shall likewise be Estreated into the said Count of the Exchequer, in manner and form aforesaid:* (5) *And thereupon the said Justices of the* King's Bench *shall likewise Award forth one Writ of* Capias *against the said party, with a like Proclamation, and like pain of forfeiture of twenty pounds:* (6) *And that also the said Justices shall have Authority by this Act infinitely to Award such Process of* Capias, *with such like Proclamation and pain of forfeiture of twenty pound as is before Limited, against the said party, that so shall make default in yielding of his Body to the Prison of the Sheriff, until such time as by return of some of the said Writs before the said Justices, it shall and may appear, that the said party hath yielded himself to the Custody of the said Sheriff, or other Officer, according to the Tenour of the said Proclamation;* (7) *And that the party upon every default and contempt by him made against the Proclamation of any of the said Writs so infinitely to be Awarded against him, shall incur like pain and forfeiture of twenty pound, which shall likewise be Estreated in manner and form aforesaid.*

8. *And*

8. *And be it further enacted by the Authority aforeſaid, That when any perſon or perſons ſhall yield his or their Body or Bodies to the hands of the Sheriff, or other Officer, upon any of the ſaid Writs of* Capias, *that then the ſame party or parties that ſhall ſo yield themſelves, ſhall remain in the Priſon and Cuſtody of the ſaid Sheriff, or other Officers, without Bail, Baſton, or Mainprize, in ſuch like manner and form, to all intents and purpoſes, as he or they ſhould or ought to have done, if he or they had been apprehended and taken upon the ſaid Writ of* Excommunicato Capiendo.

9. *And be it further Enacted by the Authority aforeſaid, that if any Sheriff or other Officer, by whom the ſaid Writ of* Capias, *or any of them ſhall be Returned, as is aforeſaid, do make an untrue Return upon any the ſaid Writs, that the party named in the ſaid Writ hath not yielded his Body upon the ſaid Proclamations, or any of them, where indeed the party did yield himſelf according to the Effect of the ſame, that then every ſuch Sheriff or other Officer, for every ſuch falſe and untrue Return, ſhall forfeit to the party grieved and damnified by the ſaid Return, the Sum of* 40 l. (2) *For the which Sum of* 40. l. *the ſaid party grieved ſhall have his Recovery and due Remedy by Action of Debt, Bill, Plaint, or Information, in any of the Queens Courts of Record, in which Action, Bill Plaint, or Information, no Eſſoign, Protection or Wager of Law ſhall be admitted or allowed for the party Defendant.*

10. *Saving and Reſerving to all Arch-Biſhops and Biſhops, and all others, having Authority to certifie any perſon Excommunicated, and like Authority to accept, and receive the ſubmiſſion and ſatisfaction of the ſaid perſon ſo Excommunicated; in manner and form heretofore uſed;* (2) *And him to Abſolve and Releaſe, and the ſame to ſignifie, as*

heretofore it hath been accustomed, to the Queen's Majesty, Her Heirs and Successors, into the High Court of Chancery. (3.) *And thereupon to have such Writs for the deliverance of the said person so absolved and released from the Sheriffs Custody or Prison, as heretofore they or any of them had, or of right ought, or might have had; any thing in this present Statute specified or contained to the contrary hereof in any wise notwithstanding.*

11. *Provided always, That in* Wales, *the Counties Palatines of* Lancaster, Chester, Durham, *and* Ely, *and in the Cinque Ports, being Jurisdictions and places Exempt, where the Queen's Majesties Writ does not run, and process of* Capias, *from thence not Returnable into the said Court of the* King's-Bench, *after any* Significavit, *being of Record in the said Court of* Chancery; *The Tenor of such* Significavit *by* Mittimus *shall be sent to such of the Head Officers of the said Country of* Wales, *Counties Palatines, and places Exempt, within whose Offices, Charge or Jurisdiction, the Offenders shall be Resiant; that is to say, to the Chancellor or Chamberlain for the said County-Palatine of* Lancaster *and* Chester, *and for the Cinque-Ports, to the Lord Warden of the same, and for* Wales *and* Ely, *and the County Palatine of* Durham, *to the Chief Justice or Justices there:* (2.) *And thereupon every of the said Justices and Officers, to whom such Tenour of* Significavit *with* Mittimus *shall be directed and delivered, shall by virtue of this Estatute, have Power and Authority, to make like Process to the Inferiour Officer, and Officers, to whom the Execution of Process there doth appertain, Returnable before the Justices there, at their next Sessions or Courts; two Months at the least after the* Teste *of every such Process:* (3.) *So always, as in every degree they shall proceed in their Sessions and Courts against the Offenders, as the Justices of the said Court of* King's-Bench

Bench *are Limited by the Tenour of this Act, in Term times to do and Execute.*

12. *Provided also, and be it Enacted, that any person at the time of any Process of* Capias *aforementioned, Awarded, being in Prison, or out of this Realm in the parts beyond the Sea, or within Age, or of* non sanæ memoriæ, *or woman Covert, shall not incur any of the pains or forfeitures aforementioned, which shall grow by any Return or Default happening, during such time of Nonage, Imprisonment, being beyond the Sea, or* non sanæ memoriæ: (2.) *And that by vertue of this Estatute, the party grieved may plead every such cause or matter in bar of, and upon the distress, or other Process that shall be made for Levying of any of the said pains, or forfeitures.*

13. *And if that the Offender against whom any such Writ of* Excommunicato Capiendo *shall be Awarded, shall not in the same Writ of* Excommunicato Capiendo, *have a sufficient and lawful addition according to the form of the Statute of* Primo *of* Henry *the Fifth, in cases of certain Suits, whereupon Process of Exigent are to be Awarded:* (2.) *Or if in the* Significavit *it be not contained, that the Excommunication doth proceed upon some cause or contempt of some Original matter of Heresie, or refusing to have his or their Child Baptized, or to recieve the Holy Communion as it is now commonly used to be Received in the Church of* England, *or to come to Divine Service, Now commonly used in the said Church of* England; *or Errour in matters of Religion, or Doctrine now recieved and allowed in the said Church of* England, *Incontinency, Usury, Simony, Perjury in the Ecclesiastical Court, or Idolatry.* (3.) *That then all and every pains and forfeitures limited against such Persons Excommunicate by this Statute by reason of such Writ of* Excommunicato Capiendo, *wanting sufficient Addition, or of*

such Significavit, *wanting all the Causes aforementioned, shall be utterly void in Law;* (4) *and by way of Plea to be allowed to the party grieved.*

14. *And if the Addition shall be with a* Nuper *of the place, Then in every such Case, at the Awarding of the first* Capias *with Proclamation according to the form mentioned, one Writ of Proclamation (without any pain expressed) shall be Awarded into the County, where the Offendor shall be most commonly Resiant at the time of the Awarding of the said first* Capias *with pain, in the same Writ of Proclamation, to be returnable the day of the return of the said first* Capias, *with pain and Proclamation thereupon at some one such time and Court, as is Prescribed for the Proclamation upon the said first* Capias *with pain:* (2.) *And if such Proclamation be not made in the County where the Offendor shall be most commonly Resiant, in such cases of Addition of* Nuper, *That then such Offenders shall sustain no pain or forfeitures by vertue of this Statute, for not yielding his or her body, according to the Tenour afore-mentioned, any thing before specified, and to the Contrary hereof in any wise Notwithstanding.*

The Comment,
With a Discourse of the Nature of Excommunication, *and how to* prevent *or* take off *the Writ* De Excommunicato Capiendo.

THough Excommunications pretend a Title *Jure Divino*, as an Institution of Christ, and therefore his *Sacred Name* is therein made use of, and several other *Spiritual Phrases* purporting that the same, and all proceedings thereunto, are by *his* Authority; yet they being so commonly thundred out, by persons who have immediately no Authority from our Lord, or his Word, to manage them; and for such *trivial Crimes* as no Law of God hath ordered them

them against, and in such a *Light and precipitant* manner, as no part of Holy Scripture warranteth: The wiser sort of men do therefore look upon them rather as *Excommunings*, or a sort of Civil punishment, like that in use among the *Romans*, *Interdico tibi aqua & igni*, than one of the solemn Institutions of God. And therefore waving any discourse of what Spiritual Influence or Effect may be dreaded from the same in our days, which we hope are wise enough not to be *Bug-Bear'd* with that Maxim of the Canonist, *Excommunicatio sive Justa, sive Injusta est timenda; A Church-Curse, be it Just, or Unjust, is to be feared.* All that we shall speak to is matter of *Law*, for so it is that there are *Legal Bars* and punishments formed by our Temporal Laws, as long as the Legislative Power shall not be at leisure to consider of them, and (if they find it requisite) Repeal them. For,

1. A person *Excommunicated* is forthwith *disabled to Sue* in any of His Majesties Courts; not that thereby he loses his Right for ever, but the Excommunication may be pleaded in *Abatement* of his present Action till the same is taken off by an *Absolution*. Yet note, That whosoever is Instrumental in procuring, soliciting, decreeing or pronouncing the Excommunication, shall never be allowed to plead it; nor shall it be pleaded, unless the Excommunication be signified by the *Bishop himself*; for the Court will receive no Certificate from any to whom they cannot write to Absolve the person, if they find cause.

2. Likewise, though a person Excommunicated may be appointed an *Executor*, and is capable of having a *Legacy* given him, yet so long as he stand Excommunicated, he is not to be allowed to *prove the Will*, nor *Sue for his Legacy* in the Spiritual Court. But note, whereas some say a man Excommunicated cannot *Marry*, 'tis Non-sense; for Marriage is *de Jure Naturali*. And alike absurd it is for any to pretend, that such a person cannot give his *Suffrage* in any

Election.

Election; as for Example of *Parliament-men*, for the ſame is an idle dream; the Law allows him a Voice ſo long as he hath a Free-hold of Forty Shillings *per Annum*, though he were under forty Curſes.

3. If a perſon (juſtly or unjuſtly) Excommunicated, continue ſo by the ſpace of forty days, then by the Common Law, the Biſhop certifying the ſame into Chancery, (which is called a *Significavit*) there ſhall iſſue forth a Writ from thence to the Sheriff of the County where the party lives, to Impriſon him without *Bail* or *Mainprize*, till he hath made ſatisfaction to Holy Church.

This is called a Writ *de Excommunicato Capiendo*, and ſuch Impriſonment of a perſon Excommunicated by a Civil Sanction, is not practiſed *in any Nation in the World* but ours, and if it had here too been *Buried* with its Brother *de Hæretico Comburendo*, I believe it would have had *few Tears* at its Funeral. But at Common Law the ſame Writ being not Returnable in any Court, the Sheriffs took their own time, and uſed their diſcretion in Executing it; to inforce which, this Statute was made, whereby it is Enacted,

1. That the ſaid Writ ſhall be Returnable in the *King's Bench*, yet the Sheriff need not bring thither the Body.

2. If the Sheriff Return *Non eſt Inventus*. a *Capias* ſhall be Awarded with Proclamation, to come in within ſix days; if the party do not, he forfeits 10 *l.* and thenceforwards *Capias* after *Capias*, and 20 *l.* forfeited on each.

3. But note, there are two Caſes in which though a man ſtands out never ſo many *Proclamations*, he ſhall forfeit nothing. And they two are theſe.

1. Where the Party againſt whom the Writ *De Excommunicato Capiendo* is Awarded, hath not therein a ſufficient and lawful *Addition*; That is (ſaith *Cowel*) *a Title over and above his Chriſtian and Sirname, ſhewing his State, Degree, Trade, Occupation, or Myſtery* (as Lord,

Lord, Knight, Gentleman, Yeoman, Clothier, and the like) *and the Hamlet, Town, Pariſh, and County* where he is, or lately was converſant and dwelling. And if it be with a *Nuper* [late of ſuch a place] then you ſee there muſt be made out one *Capias* without any penalty.

2. Where it is not expreſſed in the Biſhops Certificate, that the Cauſe for which the party was originally Cited into the Spiritual Court, was for one of theſe 10 *Cauſes* following, *viz.* 1. *Hereſie*; 2. Refuſing to have Children *Baptized*; 3. Refuſing to Receive the *Communion*; 4. Refuſing to come to *Divine Service*; 5. *Error* in Religion or Doctrine; 6. *Incontinency*; 7. *Uſury*; 8. *Simony*; 9. *Perjury* in the Eccleſiaſtical Court; or 10. *Idolatry*.

To know whether there be ſuch cauſe expreſſed, you may have *a Copy of the Significavit* at the *Curſitors* Office in *Chancery-Lane*.

Then in either of theſe caſes, all pains and forfeitures limited by this Statute by reaſon of ſuch Writ of *Excom. Cap.* wanting ſuch an *Addition* or *Significavit*, wanting all the cauſes aforeſaid, ſhall be utterly void in Law, and by way of plea to be allowed to the party grieved.

Touching the Authority of the Courts called *Spiritual* or *Eccleſiaſtick*, whether they have truly any at all by our preſent Laws, I ſhall not here debate; they that have a mind to hear what is to be ſaid on that Theme, may Read Mr. *Hickeringil's* Book of *Naked Truth*, or Mr. *Henry Care's* Book written in the year 1664. entituled, *A true Guide for all perſons concerned in Eccleſiaſtical Courts*; neither of which I ever yet ſaw ſufficiently *Anſwered*; yet ſtill ſince moſt certain it is, that ſuch Courts do proceed and *Act*, we ſhall ſuppoſe them to have ſome Power, and only inform our Reader of the courſe of their practice, as it is uſed at this day, and his beſt courſe to defend himſelf.

You

You muſt note, that perſons are uſually Excommunicated upon *Contempt* or *Contumacy*, which may be,

1. *If the party being duly Cited, Denieth, or Ommitteth to appear:* For if he be not perſonally ſummoned, he needs not appear the firſt time; but then their way is to Cite him by a Writ called *Vis & Modis*, ſet up at the *Doors of his Houſe*, or at the *Church Doors* Citing him at a certain day to appear to anſwer, &c. But (being perſonally Cited) if he doth not appear the *firſt* time, or whether he be or no, if he doth not appear the *ſecond* time, he is *Excommunicated for Contempt*. If he be Cited generally, the Law is, *That he ſhall appear the third day after the Service of the Citation.* The Law alſo is, that *if he will give the Apparitor 6d. he muſt bring him the full and true Copy of the Citation*, If a day of appearance be mentioned, and the ſame be not at leaſt the third day from the Citation; or if he hath before witneſſes given the Apparaitor *6d.* to bring him a full and true Copy of the Citation, and he doth not, I conceive, he needs not appear, but liſten what they do; and if they decree him *Excommunicated*, he may *Appeal* within 15 days and bring from the *Superiour Court* an *Inhibition* to ſtop their proceedings againſt him. And further the Rule in that Law is, *Totus dies debetur delinquenti* It is enough for a perſon to appear any hour of the day (provided it be a *Court-hour*) wherein he is Cited to appear; ſo as though he be *called* before he comes yet if he appeareth that day, he ſhall be diſcharged, or he may *Appeal*.

2. When he appeareth, he ſhall demand his *Charge*, which is either by a *Preſentment* from *Church-Wardens*, or by a *Libel*, or *Articles*, which are exhibited by a *Promoter*. Be it which it will, he ſhall demand a *Copy*; if it be *denyed* or *delayed*, he may bring if he will, a *Prohibition* from the *King's Court* at *Weſtminſter*, forbidding them to proceed in that Cauſe,

Cauſe, till they have given a full and true Copy of his Charge, according to the Statute of 2 *Hen.* 5. *Cap.* 3.

3. If he *appeareth in perſon*, he ought to have his Charge the firſt Court-day; if he appeareth *by a Proctor*, they will uſually (to get the Proctor *more Fees*) give to the *ſecond* Court-day, to bring in the *Libel* or *Articles*.

4. If they deliver him not his Charge the ſecond Court-day, he may *Appeal*, if upon his demand the Judge will not diſmiſs him; or he may, if he will, bring his *Prohibition*, for want of *Articles*, and ſtop their further proceedings.

5. If the proceedings be upon a *Promotion*, and the *Promoter* hath Imployed a *Proctor* in the Caſe, the party accuſed muſt know, that no *Proctor* can be admitted without a *Proxy*, that is, Letters *Procuratory* under the *Promoter's Hand and Seal*, authorizing him to act for him in the Caſe; and when he hath that, there muſt be an *Act* entred in *Court* to admit ſuch a perſon Proctor in the Caſe. The party charged may go or ſend to the *Regiſter*, and demand a *ſight of both thoſe*; the Reaſon in Law is this, becauſe *any Proctor is liable to the Parties Action*, if he moleſteth any perſon in the name of another, without *Authority* from him. And ſecondly, *If there be no Act of Court* admitting him as a *Proctor*, though the party accuſed be Conqueror in the caſe, yet *he cannot Recover Coſts*, becauſe there is no *Legal Adverſary*, againſt whom they can be Recovered.

6. According to the *Statute-Law*, *Every Informer* if overthrown, ſhall pay charges. According to the *Civil and Canon Law*, none ought to be admitted as a *Voluntary Promoter*, till he hath given ſecurity to pay the Charges, if overthrown. The Party Accuſed therefore ſhall before he anſwereth the *Articles*, demand this; if it be denied by the Judge, he may Appeal to the Superiour Court. It is alſo worth the

perſons

persons Enquiry who is Accused, to be well advised whether the *Promoter* in the *Ecclesiastical Courts*, be not obliged to all those things, that an Informer in the Secular Courts is tied to, by the Statutes 31 *Eliz.* 5. 18 *Eliz.* 5. 21 *Jac.* 4. The Reason is, because those Statutes say, *Informers upon any Penal Statutes*, and commonly Promoters in the *Ecclesiastical Courts*, say such and such things are done contrary to the *Statutes of this Realm, as well as contrary* to the *Canons:* now what things the Statutes, which also name *Promoters*, Require of such *Informers* and *Promoters*, the Statutes do declare.

7. When the Party Accused hath a Copy of his *Libel*, let him demand time to answer; If the Judge denies him time (at least till the next Court-day) let him Appeal; Having due time granted, in the mean time let him duly consider the *matter and form of his Libel.* As to which let him amongst other things observe these that follow:

1. Whether the matters he be Charged with, belong to the Cognisance of the *Ecclesiastical Court?* If Lawyers tell him no, let that be his Answer, and let him hasten to bring his Prohibition, which Lies in all such Causes.

2. Whether they have put into the Libel the *Promoters Petition for Right and Justice* to be done him: it is oft times left out. It is a Rule in their Law, *Libellus est ipso Jure nullus, ubi nihil Petitur.* If he finds that this is wanting, let his Answer only be That the Libel is in Law utterly void, and Insufficient, and desire to be dismissed: If the Judge refuseth to dismiss him, let him Appeal.

3. Let him also Observe, whether he be in the Articles laid to be *one of the Diocess*, or a Parishoner of such a Parish, for if it be not laid, it can never be *proved*, and so the *Promoter* must fail in his Suit; for what is not laid, cannot be proved: *Quicquid deponitur Extra Articulum, deponitur Extra Legem*, is a Rule in their Law.

Law. If he be ſaid to be a Pariſhioner of ſuch a place, within ſuch a Dioceſs, let him not in his anſwer confeſs it, but ſay, *he cannot determin the Bounds of dioceſſes & pariſhes, but for that he referreth himſelf to the Law*

4. Let him alſo obſerve, if the things he be Charged to have done, or omitted, be within the compaſs of a year, and whether there hath been ſince *no Act of Grace or Oblivion, which hath pardoned them; and whether they be not ſuch things as he hath been puniſhed for, or ſuch things as the Statute-Law hath limited the proſecution of to a leſs time than a year:* For if any of theſe things be, they may be given in anſwer to avoid either the whole, or any part of the Charge. If the Judge will not accept the *Anſwer*, the party may Sue out a *Prohibition*, and ſtop them.

5. Let him alſo obſerve, *whether he be charged certainly or particularly*, as to *time* and *place*, or only *generally* and *incertainly*; if he be charged only generally, as for the moſt part he is, in Church-Wardens Preſentments, not mentioning *time* and *place*; or incertainly, with *Or's*, that he did not come to his Pariſh-Church, ſuch and ſuch months and days, or was abſent in ſome one, or more, or moſt of them: Let his Anſwer be, that this Charge is *void in Law*, for the *generality or incertainty of it*. If the Judge will not Receive his Anſwer, let him *Appeal*; for the Law of *England* alloweth no ſuch Charges, *from which can be no Diſcharge*, or where the Crime is not fixed to a certain time. But it may be, in this Caſe, a *Prohibition* will be his beſt Remedy.

6. Let him obſerve, whether he be charged only upon *Statute-Law*, or upon *Canons*; if upon *Canons*, let him in his Anſwer modeſtly refer himſelf to *Perſons Learned in the Statute-Laws*, whether any ſuch *Canons* were ever *Enacted, Ratifyed, Allowed, or Confirmed by Parliament, or by the Eſtabliſhed Laws of the Land*, as they ſtood in the year 1639. and if not, whether they be not made void by the Statute 13. *Car.* 2.

10. When

10. When he hath given his Anſwer, which muſt be ſubſcribed by his own hand, it is uſual for the *Adverſe Proctor* to demand a time to prove his Articles, for which the Judge at his pleaſure granteth two, three, four, or ſix Court-dayes (uſually but two) let him alſo at the ſame time move, that he may have liberty within that time alſo, to produce any Witneſſes for his Defence; if it be denied, let him Appeal.

11. Let him obſerve, what time the Judge ſetteth his Adverſary to produce his Witneſſes in Court, and whom he names for Witneſſes for him. Let him alſo deſire a time to be ſet in Court for him to produce his *Witneſſes*, and be careful to bring them at the time, for they muſt all be ſworn in the Court, then Examined privately by the Regiſter. Unleſs the Adverſary deſireth a *Commiſſion to Examine* Witneſſes, (which is not often done, becauſe it is much more Chargeable) in that Caſe, there are no Witneſſes in the Court produced and Sworn, but before thoſe Commiſſioners.

12. If the *party Defendant will*, he may deliver in to the Regiſter *Interrogatories*, upon which the Regiſter ſhall Croſs-Examine his Adverſaries Witneſſes. But he muſt be very wary as to this, for he ſhall not afterward *Except* againſt any of his *Adverſaries Witneſſes* whom he hath Croſs-Examined, and made Witneſſes for himſelf.

13. Let him *Adviſe his own Witneſſes to be very careful that the Regiſter ſetteth down what they ſay, in their own words, that under the pretence of putting them into a decent phraſe, their whole ſenſe be not altered.*

14. When the *time Probatory*, ſet at firſt by the Judge, is expired, let him deſire of the Judge, *Publication.* If the Judge will grant longer time to prove, let him deſire the Advantage of the ſame time alſo, to bring more Witneſſes for himſelf, which he may, or may not, make uſe of, as he pleaſes. If once the

the Term given for proof be Expired, let him desire *Publication*, & liberty to take a *Copy of the depositions*.

15. When he hath got a *Copy*, let him diligently observe, if he can prove any thing contrary to what the Witnesses, or any of them have sworn; if he can, let him at the next Court-day, offer a paper of *general & particular Exceptions*, shewing the Particulars which he Excepteth against in their *Depositions* severally, as well as his *general Exceptions* against them all. Let him desire a time to bring in witnes, to prove his *Exceptions*. If the Judge refuseth to admit his *Exception*, or to give him due time to prove them, he may again Appeal.

16. When once the *Promoter* hath Allowed to have *Publication*, he may again move for time to Invalidate the proof of the *Exceptions*; but not to fortifie his first proof. If any Liberty of that Nature be desired, the *defendant* may *Appeal*; for unless in case for the King after Publication, no new Witnesses can be produced.

17. When the party against whom the *Promotion* is pursueth the *deposition*, let him strictly observe, whether the particulars he is charged with be proved by *two Witnesses*; for it is a Rule in their Law, *Vox unius est Vox Nullius*, and if the Judg will admit the thing proved by *one Witnes*, a Prohibition lyes: for the Kings Judges, will not only see, that those Courts shall keep to matters truly belonging to their Jurisdiction; but also that in the prosecution of them, they shall keep to the *Received Rules* of their own Law, in those main points of proof, *&c.*

18. It is an usual thing upon presentments by Church-Wardens, when the party presented calls for proof of the presentment, to tell them, That the *Church Wardens presentment is a Conviction*, they being sworn Officers. But this is contrary to the Law of *England*, which alloweth no *presentment by Officers ex Officio* to be a *Conviction*. *If Grand Juries* at *Assizes* and *Sessions* do present, this is no *Conviction*, but the persons must after this be *Indicted*, and proof made by Witnesses. If there-

therefore the Ecclesiastical Court insists on this, the person may appeal; or (which it may be is better) he may have a *prohibition* from the *Kings Court* at *Westminster* as some greater Lawyers think.

19. When the *time for proof* is Expired, and *Publication* made, and *Exceptions* given in and proved, and *Publication* of those proofs also made; either party may move for a time to be set to Conclude, and to give the Judge *Information* of the whole state and merit of the Case, and also to give Sentence in it.

20. At the day set, the Party Accused, or Promoted against, may Appear, and shew to the Judge the whole state of the Case, and plead it himself; or, if he will, by an *Advocate*, if any be at hand; or for ought I know, if there be none by Atturney, or Counselor at Common-Law; after which the Judge will appoint upon desire a day to give sentence.

22. At that day the Party must have a form of an *Absolutory* Sentence, ready to tender to the Judge, if the Judge give Sentence against him he may appeal within 15 days, by virtue of the statute, 24 *H.*8. 12.

22. All along the *Prosecution*, the person against whom the *Prosecution is*, shall do wel after every Court, to get the *Acts of the Courts in his Case*, *under the Registers hand*, and to keep them by him carefully. So much I thought fit to add here for the Readers Instruction, how to behave and Conduct himself when Troubled in *those Courts*, because 'tis a practice very little understood, by means whereof greedy *Proctors*, *Solicitors* and other *ill men*, frequently make a prey of honest people therein concerned.

I shall now Recount the *ways and means* how to get off from the Writ *De Excommunicato Capiendo*.—— We told you before, no *Bail* would be accepted, nor will an *Habeas Corpus* avail you, (unless you have a mind only to change the Prison) nor does a *Prohibition* or *Homine Replegiando* Lie. But the several ways to help (according as the Case happens) are as followeth;

1. If

1. *If the party imprisoned hath brought a Prohibition, by which the Ecclesiastical Court hath been commanded to proceed no further, and to absolve the Person, if Excommunicated, and the Judge hath disobeyed the Writ, & signified & procured the party to be imprisoned the person that is imprisoned* at any time in Term upon a *Motion*, shall have first an *Attachment* against the Judge, and then a Writ of *Supersedeas* to the Sheriff, to deliver the Prisoner, to follow the Attachment, without any Submission to the Bishop at all, or any Caution. Such Writ may be found in the Register of Original Writs, *Pag.* 66. Nay if the Attachment be granted, and the Person be Imprisoned, or a Writ out, commanding him to be taken, and the Term be done before the Attachment can be served, the Register tell us, that he shall have the same Writ during the Vacation out of Chancery: Nay, it is the Opinion of men skilled in the Law, that he shall have such a *Supersedias*, upon *Affidavit* made, that the proceedings are contrary to a Prohibition served upon the Judge, though no such Attachment be taken out.

2. *If the party imprisoned, or against whom the Writ is to take him, though he be not taken, hath appealed according to the statute*, 24 H. 8. 12. *If he bringeth into the* Court of Chancery *an Authentick copy of his Appeal, he shall have a writ of* Supersedias *to stop the Sheriff from apprehending him, or to deliver him if he be apprehended*, only this must be within a year after his Appeal, that it may appear to the Court, he hath not deserted his Appeal; you may find forms of such a *Supersedeas* also in the *Register of Original Writs*; both these are founded upon excellent Reason. The Law of *England* will not suffer Ecclesiastical Judges, either to invade their Right, or to exalt themselves against their Authority, nor yet suffer Inferiour Ecclesiastical Courts to invade the *Right*, *Power*, and *Authority* of Superiour Courts in their own Order.

3. *If a person be sued in the Ecclesiastical Courts for a matter*

matter not within their Jurisdiction, and they have caught him upon contempt, in not appearing or not obeying their Sentence: Upon a suggestion to the Kings Courts, if it appear to them, that the Original matter was not cognoscible in the Ecclesiastical Courts, they will supersede the Proceedings, and order the Imprisoned Person to be discharged.

4. *If the imprisoned Person, or he against whom the writ is out, though he be not taken, bring a Copy of the Bishops* Significavit *into the Courts at* Westminster, and make it appear to the Judges there, that the cause of Excommunication is not therein expressed, together with the day when it was pronounced, if he be not said to be Excommunicated *majori Excommunicatione*, if it be not signed by the Bishop, or said to be done *Authoritate nostra ordinaria: if the party Excommunicated be not expressed by name*, the Court will deliver the person. Dr. *Cozens* mentions three of these cases, and the Reader also may find them in the *Register of Writs*. The first he saith he cannot find in the *Register*, viz. *That the Articles or matter of the Libel must be expressed*, nor indeed do I find it there, but it is in several Reports. The reasons are, 1. Because the Law will not suffer men to be imprisoned for every light offence, (this *Dr. Cozens* gives.) 2. Because the Kings Courts can receive *Significavits* from none but the person to whom (if need be) they may write to discharge the Prisoner: Nor will the Court suffer a person to be Excommunicated, and lye in Prison for a Crime which the Ecclesiastical Court hath no judgment in; nor yet unless it appeareth to the Court, he hath stood Forty daye: Excommunicated. Again heretofore whole Cities and Communities have been Excommunicated, therefore the person must be expressed by name, or he shall not lie there.

5. Let him procure the Copy of the Writ *de Excommunicato Capiendo*, & observe, first, if it be issued in Term-time. 2. *If there were full twenty days betwixt*

the

be Teſt and Return. 3. *If it be made Returnable the next Term.* 4. *If there be due Additions in it.* 5. *If before it was delivered to the Sheriff, it was entered upon Record in the* Kings-Bench, *and made Returnable in ſo that Court.* All theſe things are Required by the ſtatute 5. *Eliz.* 23. If any of theſe Errours be found, he ſhall upon motion in the Kings-Bench be diſcharged, and the VVrit will be declared Illegal.

Laſtly, If he can he delivered by none of theſe ways, he may at any Sealing in the *Chancery*, whether it be in Term, or out of Term, upon a petition to, or motion before the L. Chancellor, have the VVrit, *de Cautione Admittenda*, granted him (in caſe he hath before offered the Biſhop a Bond of 10 *l.* : or 20 *l.* with Sureties *ſtare & parere mandatis Eccleſiæ in forma Juris*) when he hath it, let him by ſome Attorney, or Attorneys Clerk ſend it, and tender a Bond and Sufficient Sureties with it to the Biſhop, and demand the Diſcharge of the Priſoner; If it be not preſently done, let him certify ſo much, and at the next Seal move for a ſecond VVrit to the Biſhop; or (which it may be is more adviſeable) let him move for a ſecond VVrit to the Sheriff, (the form of it is in the Regiſter.) In that the King commandeth the Sheriff to admoniſh the Biſhop to accept the *Caution*, & to deliver the *Priſoner*, and further commands him, that in caſe he doth it not in his preſence, the Sheriff ſhould do it himſelf. If the Sheriff yields not Obedience, upon another Motion, he ought to have a VVrit, to the Coroners, commanding to take ſecurity of the Sheriff to appear at *Weſtminſter* ſuch a day to ſhew reaſon why he hath contemned the Kings VVrit, and further it commandeth the Coroners to take the caution of the *Priſoner*, and to deliver him. The Reader may find all this in the Regiſter where are the Forms of all theſe VVrits, and alſo in Dr. *Cozens Apology*, p. 1. 2. who being himſelf a *Judge* in the Eccleſiaſtical Courts, cannot be preſumed to have told us any

thing

thing but what is *Law*, contrary to their own Interest.

It is true, the Bishop upon taking such *Cautionary Bonds*, doth ordinarily Insist upon the persons paying the Prosecutors charges, but it is unreasonable, 1. Because he hath nothing to do but to Execute the Command of the Writ, which speaks not a word of charges. 2. Because if the charges be legally due, the Promoter must have also a legal way to Recover them; if not, it is Extortion for the Ecclesiastical Judge to Exact them. 3. Because it is no sufficient Return to the King's Writ, which mentioneth no such thing, to say, He could not discharge the Prisoner, because he would not pay the Promoter's Charge.

But because the Legal Charges are small, usually the Prisoner for his Liberty will pay the charges which are as follow.

	l.	*s.*	*d.*
For the Adversary's Proctor every Court-day until he was Excommunicated, and that day when the *Significavit* was decreed: For every day	00	01	00
For the Proctor's Procuratory Letter, Seal and Wax	00	01	08
For certifying the Service of the Citation	00	00	06
For the Articles, if there were any	00	05	00
For an Act of Court, for every day	00	00	02
For the *Significavit*	00	05	00
For the *Significavit* to deliver the Prisoner	00	05	00
For the Excommunication and the Schedule	00	02	04
For the Writ *de Excommunicato Capiendo*, and the charge of Entring it upon record in the *King's-Bench* about	01	01	00
	02	01	08

If

	l.	*s.*	*d.*
If the buſineſs have proceeded no further than a Libel and Articles, this is all the Legal Charges; but if it hath proceeded further, there may be for the Copy of the Anſwer—	00	00	09
For every Witneſs Examined 1 *s.* and for the firſt—	00	01	06
For a Fee to the Proctor at Inform.—	00	03	00
For a Definitive Sentence—	00	11	00
For the Advocate at the Sentence—	00	10	00

But note, the Charges are *more* or *leſs*, as the Cauſe went further or leſſer way before the *Excommunication.*

But if the Biſhop will not take the *Caution*, and diſcharge you, you may have a ſecond *Writ* directed to the *High-Sheriff*, commanding him to go to the Biſhop, and require him to take the Caution, and to deliver the Priſoner, and requiring him to do it *himſelf*, if the Biſhop ſtill refuſe; And if the Sheriff do not do ſo, you may have a Writ to the ſame purpoſe directed to the *Coroner* to do it, as you may ſee in that Authentick Law-Book, *The Regiſter of Original Writs*, *fol.* 66, and 67. So careful were our Forefathers for the Liberty of the Subjects Perſons. And hereby it appears that the Biſhop is bound by Law to take ſuch caution, that is, *Fidejuſſory Caution*, I mean by *Bond and Sureties*, and thereupon to abſolve the perſon Excommunicated, though he will not take an *Oath ſtare mandatis Eccleſiæ*, *To obey the commands of holy Church.* As for what ſhall be accounted ſuch *ſufficient Caution*, the practice is for the party and two Friends (for there muſt be *two* Sureties) to be bound in a bond of 10*l.* (ſeldom more, or at moſt 20*l.*) to the Biſhop, conditioned, that the Party ſhall obey the Commands of the Church, but ſuch Bond when entred into is but *a Formality*; for they

are never put in Suit, and indeed ſignifie nothing.

Thus have we given our honeſt Country-men ſome few directions how to act in this difficult and troubleſom Affair, being a Myſtery unknown to many common practices of the Law.

'Note alſo, That by the Statute of *Car.* 1. *Ca.* 11. For taking away the high Commiſſion Court, there is the following Clauſe.

And be it alſo Enacted by the Authority aforeſaid 'that no Archbiſhop, Biſhop, nor Viccar general 'nor any Chancellor Official nor Commiſſary of any 'Archbiſhop Biſhop, or Viccar general, nor any Or-'dinary whatſoever, nor any other Spiritual or Eccle-'ſiaſtical Judge, Officer or Miniſter of Juſtice, *&c.* 'ſhall *Exeficio*, or at the Inſtance, or promotion of 'any other Perſon whatſoever urge, enforce, tender, 'give, or miniſter unto any Church Warden, Sideman, 'or other perſon whatſoever any Corporal Oath, 'whereby, he or ſhe ſhall or may be charged or 'obliged to make any preſentment of any Crime or 'offence, or to confeſs or to accuſe himſelf or herſelf 'of any Crime, offence, delinquency, or miſdemeanor, 'or any Neglect, matter or thing, whereby or by 'reaſon whereof he or ſhe ſhall or may be liable, or 'expoſed to any cenſure, pain, penalty, or puniſhment 'whatſoever, upon pain and penalty that every perſon 'who ſhall offend contrary to this Statute ſhall forfeit 'and pay Treble damages to every perſon thereby 'greived and the ſum of 100 *l.* to him or them who 'ſhall firſt demand and ſue for the ſame.

And tho by the Statute 13 *Car.* 2. *Ca.* 12. part of this ſtatute is abrogated, yet this Clauſe is Excepted, and confirmed by an expreſs Proviſo of the ſaid laſt Act, And there are many precedents ſince His Majeſties Reſtauration, where Church Wardens being proſecuted in the Spir. Court for not Swearing to the Biſhops *Book of Articles* of Inquiry, have moved the *Kings-Bench* or common Pleas, and obtained a

'prohibition

prohibition to ſtop ſuch proceedings, as particularly in the Caſe of one *Waters* of *Chicheſter* in the *Common Pleas.*

AND now coming to ſpeak of the Laws upon which *Proteſtant Diſſenters* are commonly proſecuted or threatned to be proſecuted, I muſt for the Reader's better underſtanding, diſtinguiſh them; for the truth is, They are of *two* different Natures and kinds.

1. Some *Statutes* which are wholly deſigned *against Papiſts*, and ought only to be Exerted againſt them, which yet ſome now would wreſt and diſtort, and make them ſerve as *Rods* wherewith to laſh diſſenting Proteſtants for not coming to Church, Receiving the Sacrament, *&c.*

2. The Laws that were indeed made againſt Puritan *Sectaries* (as they call them) or diſſenting Proteſtants.

I ſhall firſt briefly ſum up all the firſt Sort, how many and what they are, and ſhow you the Reaſons why they ought not to be turned upon ſuch diſſenters: The Statutes I mean are in number *Five, viz.* The 1. *Elizabeth, Ca.* 2. The 23. *Elizabeth Ca.* 1. The 29. *Elizabeth Ca.* 6. The 1. *Jac. Ca.* 4. and 3 *Jac. Ca.* 4. which we ſhall handle in order.

1. The Act of the 1. *Eliz. Cap.* 2. Was made Immediately after that Queens coming to the Crown, when ſhe found nothing but Papiſts and Proteſtants in general. For the word *Puritan* in thoſe days was not known, (much leſs our modern Terms of Reproach, *Whig*, *Sectary*, or *Fanatick*) and ſhe being a good Proteſtant (having been Educated therein) and reſolved to ſupport that Religion, caſting about with her wiſe Council how to do it, That the Indifferent and *moderate* ſort of Papiſts might not be too much diſguſted or alienated from the Proteſtant Religion, but be rather invited to cloſe therewith, It was therefore on mature deliberation Concluded to

go on gently as to the Reformation, and not to throw off all the *Ceremonies* at once: And therefore having a pattern of protestant discipline made in King *Edward* the 6. time she follows the same steps as near as could be in the beginning, and builds on the same Foundation which her pious Brother and his wife and *honest Council* had laid. Therefore the first Act she passed, was to take off the Jurisdiction of the See of *Rome* (which had been Re-introduc'd by her Sister *Mary* of *unhappy Memory*) and to take off all Coercive power whatsoever from Ecclesiastical Persons, and all was annext to the Imperial Crown of *England*. This Act was Intituled, *An Act to Restore to the Crown the antient Jurisdiction, &c.* 1. *Eliz. Ca.* 1. And hereby all the Laws made in the time of Queen *Mary* for settling the Popes Authority in *England* were Repealed. And also [*Section the* 18*th*] Power is given to the Queen to grant *Commissions under the Broad Seal* of *England* to such [*Bishopes or Laymen, no matter which*] as she should appoint to hold *Ecclesiastical Courts*, and none might do it *without*, upon pain of a Præmunire, and also the Oath of *Supremacy* is formed and hereby Injoined.

The very next Act is That which we have now under Consideration Intituled *An Act of Uniformity, and Common Prayer, and Service in the Church, and Administration of the Sacrament*, Which amongst other things Inflicts *the penalty of* 12d. *for not coming to Church every Sunday and Holy-day.*

Now that this Act was intended against Papists may be concluded as well because, the whole Act runs for the beating down of the Fopperies and superstitions of the Church of *Rome*, and how could it aim at any sort of Protestants, since at that time of day there were none but Papists, and Churchmen in *England*.

This Twelve pence is not forfeited till Conviction, which must be by a Jury, to which purpose, the Justices

ſtices of *Oyer* and *Terminer*, and of Aſſize, and Mayors and Head-Officers of Corporations are Authorized To inquire, hear and determine the ſame,——But the party muſt be Indicted the next Seſſions or Aſſizes after the Offence or not at all. So that they can upon this Act Proſecute at once for no more defaults than there are *Sundayes* and Holy-days between one Seſſions or Aſſizes and another: And when the party is ſo Convicted the ſaid Courts are to make out proceſs for Levying the Twelve pences, which ſhall be Levied by the Church-Wardens for the uſe of the poor.

However there being 52. *Sundayes* and 29. Holy-dayes (appointed by our Liturgy to be obſerved) in the year, the Conſtant charge by this ſtatute for not coming to Church would be but 4*l.* 1*s.* p. *An.* [And yet by the way, Note, That We have more Holy-dayes or Feaſts to be obſerved ſince his Majeſties Reſtauration than ever the Church of *England* owned before; For there were antiently but 27. But upon the Review of the Book of Common-prayer, my Lords the Biſhops were pleaſed to add two New ones *viz.* The Converſion of St. *Paul* and St. *Barnabas*, and whereas, in our old Common-prayer-Books, 'tis ſaid *The Feaſt of* St. Michael *the Arch-Angel*, in our preſent Books, *'tis* St. Michel *and all Angels*, Which ſeems an Affront to S. *Michael* at once to leave out his Title of *Arch-Angel*, and at the ſame time bring in all *other* Angels (as well of the *lower* as Higher Hierarchies) to *ſhare* with him in a Feſtival, the Honour of which he had enjoyed ſo long, ſolely and Intire to himſelf—— but this *by the by*] So that upon the whole matter, If any body ſhould be buſy to Execute this Act upon the Proteſtant diſſenters from the Eſtabliſhed Church of *England*, yet conſidering the trouble of ſuch a Conviction, and the difficulty of proving a Negative *viz.* that a man was not at Church, for note the words are,——ſhall *repair to his own Pariſh-Church*, or

to *some usual place where Common Prayer shall be used*, So that if he were at Mr. *Read's Meeting-House*, I Conceive he were safe from this Act: All this I say Considered the Labour would be more than the trouble—— therefore let's proceed.

2. The second Act of this kind, is 23 *Eliz. Cap.* 1. Intituled, *An Act to Retain the Queens Majesties Subjects in their due Obedience.* "And by this, to *Reconcile any or* "*for any to be Reconciled to the See of* Rome, To with-"draw or be with-drawn from the Establisht Religi-"on, to the Romish Religion; Is made High-Trea-"son; And that every one saying *Mass* shall forfeit "200. Marks, and every one that hears it 100 Marks. "And every one above 16. years old not repairing to "some Church or Chappel, but forbearing the same "contrary to the *said Stat.* 1. *Eliz. C.* 2. shall, being "lawfully Convicted, forfeit, 20 l. for every month, "And the Justices at the Quarter Sessions are Im-"powered to Inquire into the Offences against this "Act, Except Treason; And if any Indicted here-"upon (Except for Treason) will submit in open "Court, and conform before Judgment given, he shall "be discharged.

Now that this Statute was expressly and wholly made against the Papists is evident by the whole Scope thereof, as punishing saying of *Mass*, & drawing the Queens Subjects to Popery, *&c.* More especially by its preamble (which alwayes opens and declares the Scope of a Law) whereas since the Statutes made in the 13. year of the Reign of the Queen our Soveraign Lady, Intituled, *An Act against the bringing in, and putting in Execution of Bulls, Writings, & Instruments, and other Superstitious things from the See of* Rome, divers ill affected Persons have practised by other means than by Bulls or Instruments, Written or Printed to with-draw Her Majesties Subjects to obey the said usurped Authority of *Rome*, and *IN RESPECT OF THE SAME* [pray mark] to perswade great

numbers

numbers to with-draw their due Obediente from Her Majesties Laws establisht for the due service of Almighty God.——For Reformation *WHEREOF*, be it Enacted, *viz.* That to with-draw to the Church of *Rome* shall be *Treason*; and not coming to Church shall forfeit 20*l. p.* month——Nothing can be more plain than that this Levelled *Wholly against the Papists*, and cannot at all affect dissenting protestants.

3. The Statute of 29. *Eliz. Cap.* 6. Is only a Reinforcement of the last Act, and therefore must be only intended of the same Persons, viz. *Popish Recusants* [For as yet there were no other] whose Penalties this Statute Encreases for not coming to Church: For whereas by the former Statute of 23*l.* it was to be only 20*l. p.* month and bound to the *good Behaviour* after conviction; *This* gives to the Queen and her Heirs a Right to 20*l p.* month for every month after such Conviction *till* they come to Church: And if default be made of payment of the 20*l.* a month, then to seize all their Goods, and two parts of their Real Estate——But this is still concerning *Popish Recusants*, For it Respects the same that were offenders against the Statute of the 23. And they were *only Papists*: Therefore 'tis absurd and unjust to turn the Edge on't upon Protestants.

4. We come now to the Statute of 1 *Jac. Ca.* 4. which confirms all the former Statutes made against Popish Recusants in the Queens time, But provides for their being discharged, tho Convicted, upon their coming to Church.

And that it means and intends none but Jesuites and Popish Priests, and other Popish Recusants appears manifestly, not only in the Title but in the first Section of the Act it self, and so throughout: The Title, is, *An Act for the due Execution of the Statutes against Jesuites, Seminary Priests, Recusants*, [the 2 former words, including the Romish Clergy, the latter the

Laiety] *&c.* and begins thus---*For the better and more due Execution of the Statutes heretofore made* [*againſt whom?*] as well *againſt Jeſuites, Seminary Prieſts, and other* SUCH-LIKE prieſts [That is, other Popiſh Prieſts tho not bred up in the *Seminaries*] *as alſo againſt all manner of Recuſants* [That is Papiſts tho not in orders] *Be it enacted, &c. That all and every the Statutes heretofore made againſt Jeſuites, ſeminary Prieſts & other Prieſts, Deacons, & Religious and Eccleſiaſtical Perſons whatſoever made, ordained or profeſſed, or to be made by any Authority or Juriſdiction derived, challenged, or pretended from the See of* Rome, *together with all thoſe made againſt any manner of Recuſants* [That is *Papiſts* ſtill, but *Lay men* not in Orders nor profeſſed of any order of Monks or Fryers as thoſe before mentioned were] *ſhall be put in due and exact execution.* ---Nothing can be more abſurd than to rack and force this Law ſo far beſides its ſcope, as to make uſe of it againſt Proteſtants agreeing with the Church of *England* in all the Doctrines and only differing in a few Indifferent ceremonies, when it moſt manifeſtly appears intended only againſt Jeſuites, Romiſh Prieſts, and other Papiſts.

5. And now was diſcovered the Helliſh *Powder-Plot* of the Papiſts which occaſioned the making of the Statute 3. *Jack. Ca.* 4. Intituled, *An Act for diſcovering and repreſſing Popiſh Recuſants.* So that both the occaſion and the very Title, ſhews evidently againſt whom this Act is deſigned, which alſo appears further in the preamble; the whole purport of this Act all along being only to Reinforce the reſt of the Acts againſt *Popiſh Recuſants*, and for that as thereby appears, ſome of them did come to Church and heard *Divine Service*, to ſave the penalties in the former Acts, and yet continued *Papiſts ſtill in their hearts.* Therefore by this Act they were all to take the Sacrament once a year, And if they refuſed they ſhould forfeit 20*l.* the 1ſt year, for the ſecond year 40*l.* & for every year afterwards 60*l.* until he or ſhe have received the ſaid Sacrament. And

And by the 4th Sections, the Church Wardens and Conſtables are to preſent the monthly abſence of all POPISH Recuſants, ——— but they are not bound by this Act to preſent any but Papiſts, For from this Act we may obſerve, that none can be Proſecuted upon this Act or any of the other which it refers to (which are all thoſe here before rehearſed) unleſs they be POPISH Recuſants, for ſo are the expreſs words of this Act. And without doubt ſhould any *buſy Officer* whatſoever Preſent or proſecute any perſon thereupon other then a Popiſh Recuſant, the perſon ſo preſented may *Joyn Iſſue*, that he is *no ſuch perſon as theſe Acts intend, being not a Papiſt.*

So that upon the whole matter, we may conclude, It is an abuſe, and utterly Illegall, to Proſecute Proteſtants on ſuch *Laws* as were made ſolely and wholly againſt Papiſts, as will further appear in our next Obſervation; and we have heard ſome Judges *have declared* ſo much.

However I ſhall here add the *Judgment* of the *Houſe* of *Commons* in the Caſe, for tho I know and own a *vote* of either or both Houſes cannot Repeal a Law, nor alter its ſence, yet certainly the Houſe conſiſting of ſo many wiſe diſcreet Perſons, & a great number of them Excellently Learned in the Laws, they are as like to Interpret a doubtful Law, and hit upon the true Interpretation how far and to what it does extend, as *two or three* little ſwaggering *Juſtices*, or any *ſingle Judge*. At leaſt were I an Officer, I ſhould rather incline to credit their opinion, & not run an hazard by imploying the *Toils* made for reſtraining the *Wolves and the Foxes*, to intangle & deſtroy the Innocent *ſheep*, meerly becauſe they do not all exactly tread in the *very ſame ſteps* and bite punctually all of one Sort of Grals.

Sabbati Sexto die Nov. 1680.

Reſolved Nemine contradicente, *That it is the opinion of*

House, That the Acts of Parliament made in the Reigns of Queen Elizabeth *and King* James *against Popish Recusants, ought not to be extended against Protestant dissenters.*

And now having discharged these unlawful weapons, let's see what *Legal Arms* there are or have been really formed against the Sectaries. And the *first* was the very Sword of *Goliah*, there was none like it.

1. I mean the Act of 35 *Eliz. Ca.* 1. (which some would make us believe has had as many *Lives* as a Cat) intituled *An Act to Retain the Queens Majesties Subjects in their due Obedience.* This was the first Law that was made since the Reformation, against those we commonly called Sectaries, Conventiclers or, Protestant Dissenters; and this Act indeed, beyond all dispute, was made against them, and them only; for the Popish Recusants are expresly excepted out of it, as appears by the Act: And that the Reader may better Judg of the true difference between *this Act*, and *those* others before recited, made against Popish Recusants, by the style and expressions, I shall here insert the first Paragraph, and give you the substance of the Rest of it.

'For the preventing and avoiding of such great Inconveniences and Perils as might happen and grow 'by the wicked and dangerous practices of seditious 'Sectaries, and disloyal Persons; Be it Enacted by 'the Queens most Excellent Majesty, and by the 'Lords Spiritual and Temporal, and the Commons 'in this present Parliament assembled; and by the 'Authority of the same, That if any Person or Persons above the Age of sixteen years, which shall 'obstinately refuse to Repair to some Church, Chappel, or usual place of common-Prayer, to hear Divine Service, Established by Her Majesties Laws 'and Statutes in that behalf made, and shall forbear 'to do the same by the space of one month next after 'without any lawful cause, shall at any time after

forty

forty days next, after the End of this Seſſion of Parliament, by Printing, Writing, or Expreſs Words or Speeches, adviſedly, or purpoſely practiſe, or go about to make or perſuade any of Her Majeſties Subjects, or any other within her Highneſs's Realms or Dominions, to deny, withſtand, and impugn Her Majeſties Power and Authority, in caſes Eccleſiaſtical, United and Annexed to the Imperial Crown of this Realm; or to that end or purpoſe ſhall adviſedly or maliciouſly move, or perſuade any other perſon whatſoever, to forbear, or abſtain from coming to Church, to hear Divine Service, or to Receive the Communion, according to Her Majeſties Laws and Statutes aforeſaid, or to come to, or be preſent at any unlawful Aſſemblies, Convinticles or Meetings, under colour or pretence of any Exerciſe of Religion, contrary to Her Majeſties Laws and Statutes; or if any perſon or perſons which ſhall obſtinately Refuſe to Repair to ſome Church, by the ſpace of one month, to hear Divine Service, as is aforeſaid, ſhall after the ſaid forty daies, either of him or themſelves, or by the Motion, Perſuaſions, Inticement or Allurement of any other, willingly Joyn in, or be preſent at any ſuch Aſſemblies, Conventicles, or Meeting under colour or pretence of any ſuch Exerciſe of Religion, contrary to the Laws and Statutes of this Realm as is aforeſaid; That then every ſuch perſon ſo offending, as aforeſaid, and being thereof lawfully convicted, ſhall be *Committed to Priſon*, and thereto Remain, *without Bail* or Mainpriſe, *until* they ſhall *Conform*, and yield themſelves to come to ſome Church Chapel, or uſual place of Common-Prayer, and hear Divine Service- *&c.*

Then the Act goes on, and provides, That if the perſon do not Conform within three months after Conviction, he ſhould Abjure, that is, be Baniſht, and ſwear never to come back without leave; And if he will not ſwear ſo, then the ſame to be Felony, without Benefit of Clergy, if

From which Act these 3 things are observeable.

1. That the same was wholly intended against the *Puritans* or *Sectaries*, for the Papists are expressly exempted by a particular clause, Sect. 12. in these words, 'Provided that *No Popish* Recusant, or *Feme* 'Covert shall be compelled or bound to *abjure by vertue* 'of this Act.

2. That Q. *Eliz.* and her wise Parliament did not intend or take such Protestant Recusants to be within the meaning of, or punishable by the other before mentioned Statutes against Popish Recusants; For if they had so understood, they might have punished them sufficiently on those old Laws without giving themselves the trouble of making this new Law against them. *Frustra fit per plura quod fieri potest per pauciora. God and the Law do nothing in vain.*

3. If it be objected, That all those Laws as well as this ought to be construed to one and the same end & scope, and that all the before mentioned Acts of Qu. *Elizabeth*, and K. *James* are equally to be applyed to all Dissenters from the establisht Church of *England*; I answer that cannot be; for since in this Act no Papists are concerned, being particularly exempted as aforesaid: then it necessary follows, if the Popish Recusants shall not be punished by this Act made against Sectaries and seditious Conventiclers, that then the Sectaries and Conventiclers, Protestant Dissenters, that is, Protestant Recusants (for that 'tis they aim at, to colour the laying the other *Acts* upon them) shall not be prosecuted upon those Laws made only against Popish Recusants; for if they should, then you leave the Protestant Recusants in a far worse condition than the Papists, the one being provided and not the other,

But still note, that all that I have said about this Act of the 35. of *Eliz.* compairing it with the others made against Popish Recusants, is only to shew the nature of the one and the other: For the truth is, this Act 35th of *Eliz. Is not now in force*, ——— As appears thus: 1. The

1. The very words thereof ſhew it to have been originally but a temporary Act, for the laſt words of it are theſe,—*This Act to continue no longer than to the end of the next Seſſion of Parliament.*

2. By ſeveral Acts it was continued till the 1ſt year of K. *James*, and then it was enacted, that the ſame ſhould be continued, and remain in Force untill the end of the firſt Seſſion of the next Parliament.

3. The ſecond and next Seſſion of Parliament began and holden by Prorogations the 5th of *Nov.* in the 3d year of K. *James*, and ended the 27th of *May* next, and was then prorogued to the 18th, of *Nov.* 1606. In which Seſſion there was no continuance of this Statute of the 35th of *Eliz.* ſo that there it expired, abſolutely ceaſed, and was of no more force than if it had never been, and ſo continued for many years buried in Oblivion.

4. In a Parliament held the 21. of K. *James*, ca. 28. It is (amongſt other things) enacted, '*That this Sta-*'*tute of the* 35. *of* Eliz. *ſhall be adjudged ever ſince the* '*Seſſion in the Seventh Year of His Majeſties Reign of* Eng-'land, *to have been of ſuch force and effect, as the ſame were* '*the laſt day of that Seſſion, and from thenceforth to the end* '*of the firſt Seſſion of the next Parliament.*—But the truth is, that the ſaid Statute of the 35th of *Eliz.* was in *no force*, nor of any effect at the laſt day of the Seſſion in the 7th. year of K. *James*, being expired and gone long before, *viz.* in the 3. year of that King as aforeſaid. And being ſo down then this Stat. of the 21. *Jacobi* can no way ſet it up again; for this only ſets up what was in force in that Seſſion of the 7th. of K. *James*, and no otherwiſe.

5. So likewiſe in the 3. *Caroli primi*, cap. 4. this Act (amongſt others) is mentioned, but how?—*That it ſhall continue to the end of the firſt ſeſſion of the next Parliament, in ſuch force and effect as it was the firſt year of* Charles *the firſt*,—when indeed it was then in no force at all.

6. In

6. In the 16th *Caroli secundi*, cap. 4. an Act was made, Intituled, *An Act to prevent and suppress seditious Conventicles*. Which begin thus: 'Whereas an Act 'made in the 35th year of the Reign of our late Sove-'rain Lady Queen *Eliz.* Intituled, *An Act to retain 'the Queens Majesties Subjects in their due obedience*, hath 'not been put in Execution, by reason of some doubt 'of late made, whether the said Act be still in force, 'although it be very clear and evident: And it is here-'by declared, that the said Act is still in force, and 'ought to be put in execution: For providing there-'fore of further and more speedy Remedies, *&c.* Be 'it enacted, *&c.* And the last clause of the Statute of 'the 16 *Car.* 2*d.* runs thus: 'Provided that this Act 'continue in force for 3 years, after the end of this 'present Session of Parliament, and from thence to 'the end of the next Session of Parliament, after the 'said 3 years, and no longer.

Now how far these words—*It is hereby declared it is in force, and ought to be put in execution*, without saying, *it is hereby enacted, that it shall be* in force, might operate to give some Life and strength to the aforesaid expired Statute of the 35th of *Eliz.* I shall not determine: But suppose it were thereby *set on foot again*, this last Statute is but one *intire* Statute, and that part which declares or inables the Statute of the 35th of *Eliz.* to be in force, is joined and annexed to the rest, and is altogether but *one Law*, and hath its period at the time before prefixed, and then that declarative part must die with the rest.

Now *that Session* wherein this Statute of 16 *Car.* 2. was made, ended the 16th and 17th of *Car.* 2. Then the three Years, for which it was to continue commenc'd, and ended the 20th *Car.* 2*d.* but after the three years it was to continue till the next Session of Parliament, which *next Session*, after the three years, began 10. *October*, 1667. and by Adjournments was continued to the 24th of *October*, 1670, being the 22d

of

of *Car.* 2d. and then was the end of that, and with it this Conventicle Act expired, so that now there is no pretence of the 35th of *Elizabeth's* being in force; for the declarative part in this Conventicle Act cannot enforce or give life to any thing longer than it *lives it self*: For if the *Declaring* part of this Act after it self is extinguisht, can be read, urg'd or construed as a Law to enforce and enliven another Statute, which hath no being of a Law in it self, then it would necessarily follow, that an expired Law is as Authentick as a Law in being, which is absurd,

From what hath been said, it appears, That as *Protestant Dissenters* ought not to be prosecuted on the Laws made against Popish Recusants; so likewise 'tis very evident, That both the Statute of the 35th of *Eliz.* and also that of the 16th of *Car. secundi*, are Expired, and of no force. And indeed 'tis happy for the Nation that they are so; for had these two Acts been still in force, being of a *cruel* sanguinary nature, much mischief might have accrewed to the People of this Kingdom.

So that there are now *no Laws* in being to punish the Conventiclers, and the Nonconformist Ministers, who did not conform to the Act of Uniformity made in this Kings Reign; but the Act commonly called the 5. *Mile* or *Oxford* Act: And the Conventicle Act made the 22th of this King.

These we shall severely consider.

Anno 17. *Caroli Secundi, Ca.* 2.

An Act for Restraining Nonconformists from Inhabiting in Corporations.

'Whereas divers Persons, Vicars, Curates, Lecturers, 'and other Persons in holy orders have not declared, 'their unfeigned Assent and Consent to the use of all 'things contained and prescribed in the Book of

'Com-

'Common-Prayer, and Administration of the Sacra-
'ments, and other Rites & Ceremonies of the Church,
'according to the use of the Church of *England*, or
'have not subscribed the Declaration or Acknowledg-
'ment contained in a certain Act of Parliament made
'in the 14 Year of His Majesties Reign, and Intituled,
'*An Act for the Uniformity of publick Prayers, and Admi-*
'*nistration of Sacraments, and other Rites and Ceremonies,*
'*and for the establishing the Form of making, ordaining, and*
'*consecrating of Bishops, Priests and Deacons in the Church*
'*of* England, according to the said Act, or any o-
'ther subsequent Act, And whereas they or some of
'them, and diverse other person and persons not or-
'dained according to the Form of the Church of *Eng-*
'*land*, and as have since the Act of Oblivion taked up-
'on them to preach in unlawful Assemblies, Conven-
'ticles, or Meetings, under colour or pretence of Ex-
'ercise of Religion, contrary to the Laws and Statutes
'of this Kingdom, have setled themselves in divers
'Corporations in *England* sometimes three or more
'of them in a place, thereby taking an opportunity
'to distil the poisonous Principles of Schism and Re-
'bellion into the hearts of His Majesties Subjects, to
'the great danger of the Church and Kingdom.

II 'Be it therefore enacted by the Kings most excel-
'lent Majesty, by and with the Advice and consent of
'the Lords Spiritual and Temporal, and the Commons
'in this present Parliament assembled; and by the
'Authority of the same, That the said Parson, Vi-
'cars, Curates, Lecturers, and other persons in Ho-
'ly Orders, or petitioned Holy Orders, or pretend-
'ing to Holy Orders, and all Stipendiaries, or other
'persons who have been possessed of any Ecclesiastical
'or Spiritual Promotion, and every of them, who
'have not declared their unfeigned Assent & Con-
'sent as aforesaid, and subscribed the Declaration a-
'foresaid, and shall not take and subscribe the Oath
'following.

I A. B

I *A.* B. do ſwear, That it is not lawful upon any pretence whatſoever, to take Arms againſt the King; and that I do abhor that Traiterous poſition of taking Arms by his Authority againſt his perſon, or againſt thoſe that are commiſſioned by him, in purſuance of ſuch Commiſſions; and that I will not at any time endeavour any Alteration of Government either in Church or State.

III. 'And all ſuch perſon, and perſons as ſhall 'take upon them to preach in any unlawful Aſſembly 'Conventicle or Meeting, under colour or pretence 'of any exerciſe of Religion, contrary to the Laws 'and Statutes of this Kingdom, (2.) ſhall not at any 'time from and after the 24th day of *March*, 'which ſhall be in this preſent year of our Lord God 'One thouſand ſix hundred ſixty and five unleſs only 'in paſſing upon the Road come or be within five 'Miles of any City, or Town Corporate, or Burrough, 'that ſends Burgeſſes to the Parliament, within His 'Majeſties Kingdom of *England*, Principally of *Wales*, 'or of the Town of *Berwick* upon *Tweed*, (3) or 'within five miles of any Pariſh Town or Place, 'wherein he or they have ſince the Act of Oblivion 'been Parſon, Vicar, Curate, Stipendiary, or Lectu-'rer, or taken upon them to Preach in any unlawful 'Aſſembly, Conventicle, or Meeting, under Colour 'or pretence of any exerciſe of Religion, contrary to 'the Laws and Statutes of this Kingdom, (4) Be-'fore he or they have taken and ſubſcribed the Oath 'aforeſaid, before the Juſtices of the Peace at their 'Quarter Seſſions, to be holden for County, Riding, 'or Diviſion next unto the ſaid Corporation, City, 'or Burrough, Pariſh, Place or Town, in open Court; 'which ſaid Oath the ſaid Juſtices are hereby Im-'powered there to Adminiſter,) (5) Upon forfei-'ture for every ſuch offence the ſum of Forty pounds 'of Lawful Engliſh Mony; the one third part there-'of to His Majeſty and His Succeſſors, the other third

part

part to the use of the poor of the Parish where the 'Offence shall be committed, and the other third 'part thereof to such person or persons as shall or 'will sue for the same by Action of Debt, Plaint, 'Bill, or Information in any Court of Record at *West-'minster*, or before any Justices of Assize, *Oyer* and '*Terminer*, or Gaol-delivery, or before any Justices 'of the Countries Palatine of *Chester*, *Lancaster*, or *Dur-'ham*, or the Justices of the great Sessions in *Wales*, 'or before any Justices of Peace in their Quarter 'Sessions, wherein no Essoin, Protection, or Wager 'of Law shall be allowed.

IV. 'Provided always, and be it further enacted 'by the Authority aforesaid, That it shall not be Law-'ful for any Person or Persons restrained from coming 'to any City, Town Corporate, Burrough, Parish, 'Town, or place, as aforesaid, or for any other Per-'son or Persons, as shall not first take and subscribe the 'aforesaid Oath, and as shall not frequent Divine Ser-'vice established by the Laws of this Kingdom, and 'carry him or her self reverently, decently, and 'orderly there, to teach any publick or private 'School, or take any Boarders or Tablers, that are 'taught or instructed by him or her self, or any other, 'upon pain for every such offence to forfeit the sum 'of Forty pounds, to be recovered and distributed 'as aforesaid.

V. 'Provided also, and be it further enacted by 'the Authority aforesaid, that it shall be lawful for 'any two Justices of the Peace of the respective 'County, upon Oath to them of any Offence a-'gainst this Act, which Oath they are hereby im-'powered to administer, to commit the offender for 'six months without Bail or Mainprise, unless upon 'or before such Commitment, he shall before the 'said Justices of the Peace, swear and subscribe the 'aforesaid Oath and Declaration.

VI. 'Provided alwayes, that if any person intends

'to

to be restrained by vertue of this Act, shall without fraud or Covin be served with any Writ, *Sub-pœna*, Warrant, or other Process, whereby his personal appearance is required, his Obedience to such Writ, *Sub-pœna*, or Process, shall not be construed an Offence against this Act.

Note, That as to the Penalty of Forty Pound, the party must be tryed at the Assizes or Sessions before it is forfeited. But any two Justices of Peace may commit for six Months, unless before them he'l swear and subscribe the Oath in this Declaration specified, the Assent and Consent, and the Declaration therein referr'd unto, which if he do he puts himself out of their power.

Now the Assent and Consent he has spoke of is appointed by the Stat. 13. and 14. of *Car.* 2*di*, *chap.* 4. as follows.

'I *A.B.* do here declare my unfeigned Assent & Consent to all & every thing contained & prescribed, in & by the Book intituled, the Book of common Prayer, & Administration of the Sacraments, and other Rites and Ceremonies of the Church, according to the use of the Church of *England*, together with the Psalter or Psalms of *David*, pointed as they are to be sung or said in Churches; and the form and manner of making, ordaining, and consecrating of Bishops, Priests, and Deacons.

The Declaration is by the Act last mentioned, as follows.

I *A.B.* do declare, that it is not lawful, upon any pretence whatsoever, to take Arms against the King; and that I do abhor that Traiterous position of taking Arms by his Authority against his Person, or against those that are commissioned by him; and that I will conform to the Liturgy of the Church of *England*, as it is now by Law established: And I do declare, That I do hold there lies no Obligation upon me, nor any other person, from the Oath commonly

monly called the solemn League and Covenant to endeavour any change or alteration of Government, either in Church or State; and that the same was in it self an unlawful Oath, and imposed upon the Subjects of this Realm against the known Laws and Liberties of this Kingdom.

But note, that this last branch of this Declaration, by a subsequent clause of the same Act, was to continue but till the 25th day of *March*, 1682 so that now the same is not to be required.——And thus much for this Five-Mile Act.

We now proceed to the other Statute against Protestant Dissenters, *viz.*

Anno Vicessimo Secundo Caroli Secundi Regis, Cap. 1. *An Act to prevent and suppress Seditious Conventicles.*

For providing further and more speedy Remedies against the growing and dangerous practices of Seditious Sectaries, and other disloyal persons, who under pretence of Tender Consciences, have or may at their Meetings contrive Insurrections (as late Experience hath shewn;) (2.) Be it enacted by the Kings most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons in this present Parliament Assembled, and by Authority of the same, That if any person of the age of sixteen years, or upwards, being a Subject of this Realm, at any time after the tenth day of *May* next, shall be present at any Assembly, Conventicle or Meeting, under colour or pretence of any Exercise of Religion, in other manner than according to the Liturgy and practice of the Church of *England*, in any place within the Kingdom of *England*, Dominion of *Wales*, or Town of *Berwick* upon *Tweed*, at which Conventicle, Meeting or Assembly, there shall be five persons or more Assembled together over and besides those of the same houshold; if it be in a house where there is a Family inhabiting;

ng; or if it be in a house, field, or place where there s no Family inhabiting; then where any five persons r more, are so Assembled as aforesaid, it shall and ay be lawful to and for any one or more Justices of he Peace of the County, Limit, Division, Corporaion or Liberty wherein the Offence aforesaid shall e Committed; or for the chief Magistrate of the lace where the Offence aforesaid shall be comitted: and he and they are hereby Required and njoyned *upon Proof* to him or them Respective- made of such Offence, either by Confession of ie Party, or Oath of two Witnesses, (3.) Which Oath the said Justice and Justices of the Peace, and Chief Magistrate respectively, are hereby Required nd Impowered to Administer; or by Notorious vidence and Circumstance of the fact, to make a ecord of every such Offence under his or their lands and Seals respectively; which Record so ade as aforesaid, shall to all intents and purposes be a Law taken and adjudged to be a full and *perfect Conviction* of every such Offender for such offence; nd thereupon the said Justice, Justices and Chief Magistrate respectively shall Impose on every such Offender so convict as aforesaid, a Fine of five shillings for such first Offence; which Record and Conviction shall be certified be the said Justice, Justices, r Chief Magistate, at the next Quarter-Sessions of the Peace, for the County or place where the Offence was committed.

2. And be it further Enacted by the Authority aforesaid, That if such Offendor so convicted as aforesaid, shall at that time again commit the like Offence or Offences, contrary to this Act, and be thereof in manner aforesaid convicted, then such Offendor so convicted of such like Offence or Offences, shall for every such Offence incur the penalty of ten shillings (2.) Which Fine and Fines for the first and every other Offence, shall be Levied by Distress and Sale of the

the Offenders Goods and Chattels; or in case of the poverty of such Offender, upon the Goods and Chattels of any other person or persons who shall be then convicted in manner aforesaid of the like Offence at the same Conventicle, at the discretion of the said Justice, Justices, or Chief Magistrate respectively, so as the Sum to be Levied on any one person in case of the poverty of other Offenders, amount not in the whole to above the Sum of ten pounds, upon occasion of any one Meeting as aforesaid: (3.) And every Constable, Headborough, Tythingman, Church-Wardens, and Over-seers of the Poor respectively, are hereby Authorized and Required to Levy the same accordingly, having first received a Warrant under the Hands and Seals of the said Justice, Justices, or Chief Magistrate respectively so to do; (4.) The said Monies so to be Levied, to be forthwith delivered to the same Justice, Justices, or Chief Magistrate, and by him or them to be distributed, the one third part thereof to the use of the King's Majesty, His Heirs and Successors, to be paid to the High Sheriff of the County for the time being in manner following; that is to say, the Justice or Justices of Peace shall pay the same into the Court of the respective Quarter-Sessions, which said Court shall deliver the same to the Sheriff, and make a Memorial on Record of the payment and delivery thereof, which said Memorial shall be a sufficient and final discharge to the said Justice and Justices, and a charge to the Sheriff, which said discharge and charge shall be certified into the Exchequer together, and not one without the other: And no Justice shall or may be questioned, or accountable for the same in the Exchequor or elsewhere, than in Quarter-Sessions; another third part thereof to and for the use of the Poor of the Parish, where such Offence shall be committed; and the other third part thereof to the Informer and Informers, and to such

person

perſon and Perſons as the ſaid Juſtice, Juſtices, or chief magiſtrate reſpectively, ſhall appoint, having regarded to their diligence and Induſtry in the diſcovery, diſperſing and puniſhing of the ſaid Conventicles.

3. And be it further enacted by the Authority aforeſaid, That every perſon who ſhall take upon him to preach or teach in any ſuch Meeting, Aſſembly, or Conventicle, and ſhall thereof be convicted as aforeſaid, ſhall forfeit for every ſuch firſt Offence the ſum of Twenty pound, to be Levied in manner aforeſaid, upon his Goods and Chattles; (2.) And if the ſaid Preacher or Teacher ſo convicted be a ſtranger, and his Name and Hibitation not known, and is fled and cannot be found, or in the Judgment of the Juſtice, Juſtices, or chief Magiſtrate, before whom he ſhall be convicted, ſhall be thought unable to pay the ſame, the ſaid Juſtice, Juſtices, or chief Magiſtrate reſpectively, are hereby impowered and required to levy the ſame by Warrant as aforeſaid upon the Goods & Cattels of any ſuch perſons who ſhall be preſent at the ſame Conventicle, any thing in this or any other Act, Law, or Statute to the contrary notwithſtanding; and the Money ſo levied to be diſpoſed of in manner aforeſaid. (3.) And if ſuch Offender ſo convicted as aforeſaid, ſhall at any time again commit the like Offence or Offences contrary to this Act, and be therefore convicted in manner aforeſaid, then ſuch Offender ſo convicted of ſuch like Offence or Offences, ſhall for every ſuch Offence incur the penalty of Forty pounds, to be levied and diſpoſed as aforeſaid.

4. And be it further enacted by the Authority aforeſaid, That every perſon that ſhall wittingly and willingly ſuffer any ſuch Convinticle Meeting, or unlawful Aſſembly aforeſaid, to be held in his or her Houſe, Out-houſe, Barn, Yard, or Backſide, and be convicted thereof in manner aforeſaid, ſhall forfeit the ſum of

20 l.

20 l. to be levied in manner aforeſaid, upon his or her Goods and Chattels: or in caſe of his or her poverty or inability as aforeſaid, upon the Goods and Chattels of ſuch Perſons who ſhall be convicted in manner aforeſaid, of being preſent at the ſame Conventicle; and the Mony ſo levied to be diſpoſed of in manner aforeſaid.

5. Provided alwayes, and be it enacted by the Authority aforeſaid, That no perſon ſhall by any clauſe of this Act be liable to pay above ten pounds for any one Meeting, in regard of the poverty of any other Perſon or Perſons.

Provided alſo, and be it further enacted: That in all caſes of this Act where the penalty or ſum charged upon any Offendor, exceeds the ſum of ten Shillings and ſuch Offendor, ſhall find himſelf aggrieved, it ſhall and may be lawful for him within one Week after the ſaid Penalty or Mony charged ſhall be paid or levied, to appeal in writing from the Perſon or Perſons convicting, to the Judgment of the Juſtices of the Peace in the next Quarter-Seſſions, (2.) To whom the Juſtice or Juſtices of Peace, chief Magiſtrate or Alderman, that firſt convicted ſuch offendor, ſhall return the mony levied upon the appellant, and ſhall certifie under his and their Hands and Seals, the Evidence upon which the conviction paſt with the whole Record thereof, and the ſaid Appeal. (3.) Whereupon ſuch Offendor may plead and make defence, and have his *Tryal by a Jury* thereupon: (4.) And in caſe ſuch Appellant ſhall not proſecute with effect, or if that upon ſuch trial he ſhall not be acquitted, or judgment paſs not for him upon his ſaid appeal, the ſaid Juſtices at the Seſſions ſhall give treble coſts againſt ſuch Offendor for his unjuſt Appeal (5) and no other Court whatſoever ſhall intermeddle with any cauſe or cauſes of Appeal upon this Act, but they ſhall be finally determined in the Quarter ſeſſions only.

7 Pro-

7. Provided alwaies, and be it further Enacted, that upon the delivery of ſuch Appeal as aforeſaid, the perſon or perſons appellant, ſhall enter before the perſon or perſons Convicting into a Recognizance, to Proſecute the ſaid Appeal with Effect. (2.) Which ſaid Recognizance the Perſon or Perſons Convicting is hereby Impowered to take, and Required to Certifie the ſame to the next quarter Seſſions. (3.) And in Caſe no ſuch Recognizance be entred into, the ſaid Appeal to be null and Void.

8. Provided alwaies that every ſuch Appeal ſhall be left with the Perſon or Perſons ſo Convicting as aforeſaid, at the time of the making thereof.

9. And be it further Enacted by the Authority aforeſaid, that the Juſtice, Juſtices of the Peace and Chief Magiſtrate reſpectively, or the reſpective Conſtables, Headboroughs and Tything-men by *Warrant* from the ſaid Juſtice, Juſtices, or Chief Magiſttate reſpectively, ſhall and may with what Aid, Force and Aſſiſtance they ſhall think fit, for the better Execution of this Act, after Refuſal or Denyal to enter, break open and enter into any Houſe or other place, where they ſhall be Informed of any ſuch Conventicle as aforeſaid, is or ſhall be held, as well within Liberties as without; (2.) And take into their Cuſtody the Perſons there unlawfully Aſſembled, to the Intent they may be proceeded againſt according to this Act: (3.) And that the Lieutenants or Deputy-Lieutenants, or any Commiſſionated Officer of the *Militia*, or other of his Majeſties forces, with ſuch Troops or Companies of Horſe and Foot; and alſo the Sheriffs and other Magiſtrates and Miniſters of Juſtice, or any of them, jointly or ſeverally, within any of the Counties or Places within this Kingdom of *England*, Dominion of *Wales*, or Town of *Berwick* upon *Tweed*, with ſuch other Aſſiſtance as they ſhall think meet,

or can get in Readineſs with the ſooneſt, *on Certificate* made to them reſpectively under the Hand and Seal of any one Juſtice of the Peace or Chief Magiſtrate, of his particular Information or Knowledge of ſuch unlawfull Meeting or Conventicle held, or to be held in their reſpective Counties or Places, and that he with ſuch Aſſiſtance as he can get together, is not able to ſuppreſs and diſſolve the ſame, ſhall and may, and are hereby required and enjoyned to Repair unto the place where they are ſo held or to be held; and by the beſt means they can, Diſſolve, Diſſipate, or prevent all ſuch unlawfull Meetings, and take into their Cuſtody, ſuch and ſo many of the ſaid Perſons ſo unlawfully Aſſembled as they ſhall think fit, to the Intent they may be Proceeded againſt according to this Act.

10. Provided alwaies that no dwelling-houſe of any Peer of this Realm where he or his Wife ſhall then be Reſident, ſhall be ſearched by vertue of this Act, but by Immediate Warrant from his Majeſty under his Sign Manual, or in the Preſence of the Lieutenant, or one Deputy Lieutenant, or two Juſtices of the Peace, wherof one to be of the Quorum of the ſame County or Riding.

11. And be it further Enacted by the Authority aforeſaid, That if any Conſtable, Headborough, Tything-man, Church-Warden, or Overſeer of the Poor, who *ſhall know or be credibly Informed* of any ſuch Meetings or Conventicles held within his Precincts, Pariſhes or Limits, and ſhall not give Information thereof to ſome Juſtice of the Peace, or the Chief Magiſtrate, and endeavour the Conviction of the Parties according to his Duty, but ſuch Conſtable, Headborough, Tything-man, Churchwarden, Overſeers of the Poor, or any perſon lawfully called in Aid of the Conſtable, Headborough or Tything-man, ſhall wilfully and wittingly omit the performance of his Duty, in the Execution of this

this Act, and *be thereof Convicted in manner aforeſaid*, he ſhall forfeit for every ſuch Offence the Summe of five Pound, to be Levyed upon his Goods and Chattels, and diſpoſed in manner aforeſaid. (2.) And that if any Juſtice of the Peace, or Chief Magiſtrate ſhall wilfully and wittingly omit the Performance of his Duty in the Execution of this Act, he ſhall forfeit the Summe of one hundred Pounds, the one Moiety to the uſe of the Informer, to be Recovered by Action, Suit, Bill or Plaint, in any of his Majeſties Courts at *Weſtminſter*, wherein no Eſſoign, Protection or Wager of Law ſhall lie.

12. And be it further Enacted by the Authority aforeſaid, that if any Perſon be at any time Sued for putting in Execution any of the Powers contained in this Act, otherwiſe than upon Appeal allowed by this Act, ſuch Perſon ſhall and may Plead the General Iſſue, and give the ſpecial matter in Evidence; (2.) And if the Plaintiff be Nonſuit, or a Verdict paſs for the Defendant, every ſuch Defendant ſhall have his full Treble Coſts.

13. And be it further Enacted by the Authority aforeſaid, that this Act, and all clauſes therein contained, ſhall be Conſtrued moſt largely and beneficially for the ſuppreſſing of Conventicles, and for the Juſtification and Encouragement of all Perſons to be Employed in the Execution thereof. (2.) And that no Record, Warrant or Mittimus to be made by Vertue of this Act, or any Proceedings thereupon, ſhall be Reverſed, Avoided, or any way Impeached by reaſon of any Default in form. (3.) And in Caſe any Perſon offending againſt this Act, ſhall be an Inhabitant in any other County or Corporation, or fly into any other County or Corporation after the Offence Committed, the Juſtice of Peace or Chief Magiſtrate before whom he ſhall be Convicted as aforeſaid, ſhall certifie the ſame under his hand and Seal, to any

Juſtice of Peace, or chief Magiſtrate of ſuch other County or Corporation wherein the ſaid perſon or perſons are Inhabitants, or are Fled into. (4.) Which ſaid Juſtice or chief Magiſtrate reſpectively, is hereby Authorized and required to Levy the Penalty or Penalties in this Act mentioned; upon the Goods and Chattels of ſuch perſon or Perſons, as fully as the ſaid other Juſtice of Peace might have done, in caſe he or they had been Inhabitants in the place where the Offence was committed.

14. Provided alſo that no Perſon ſhall be Puniſhed for any Offence againſt this Act, unleſs ſuch Offender be Proſecuted for the ſame within three Months after the Offence Committed. (2.) And that no Perſon who ſhall be Puniſhed for any Offence by Vertue of this Act, ſhall be Puniſhed for the ſame Offence by Vertue of any other Act, or Law whatſoever.

15. Provided and be it further Enacted by the Authority aforeſaid, that every Alderman of *London* for the time being, within the City of *London* and the Liberties thereof, ſhall have (and they and every of them are hereby Impowered and required to Execute) the ſame Power and Authority within *London* and the Liberties thereof, for the Examining, Convicting and Puniſhing of all Offences within this Act committed within *London*, and the Liberties thereof, which any Juſtice of Peace hath by this Act in any County of *England*, and ſhall be ſubject to the ſame Penalties and Puniſhments, for not doing that which by this Act is directed to be done by any Juſtice of Peace in any County of *England*.

16. Provided and be it Enacted by the Authority aforeſaid, that if the Perſon Offending and Convicted as aforeſaid, be a Feme-covert, cohabiting with her Husband, the Penalties of five Shillings and

and ten Shillings, ſo as aforeſaid Incurred, ſhall be Levyed by Warrant as aforeſaid, upon the Goods and Chattels of the Huſband of each Feme-covert.

17. Provided alſo, that no Peer of this Realm ſhall be Attached or Impriſoned by Vertue or Force of this Act, any thing, matter or clauſe therein to the contrary notwithſtanding.

18. Provided alſo, that neither this Act, nor any thing therein contained, ſhall extend to Invalidate or avoid his Majeſties Supremacy in Eccleſiaſtical Affairs; (2.) But that his Majeſty and his Heirs and Succeſſors, from time to time, and at all times hereafter, Exerciſe and Enjoy all Powers and Authority in Eccleſiaſtical Affairs, as fully and as amply as himſelf or any of his Predeceſſors have, or might have done the ſame, any thing in this Act notwithſtanding.

Notes upon the foregoing Act.

1. By the Title, Preamble and Scope of the Act, it appears that the ſame is intended for ſuppreſſing *Seditious* Conventicles under *Pretence* of Religious Worſhip; that is, where the Conventiclers meet together under a pretence of Worſhip, not according to the Liturgy and Practice of the Church of *England*, but indeed to carry on ill deſigns againſt the State.

2. If any ſuch Conventicle be, the Juſtices knowing it by the Oaths of *two Witneſſes*, may make a Record thereof, and then the Perſons ſo offending, ſhall forfeit ſo as in the Act you have heard.

3. It muſt appear upon Oath before the Juſtices, or Confeſſion of the Parties, 1. That it was a *Seditious* Conventicle, met together to diſturb the Peace, under pretence of Religion. 2. That the Worſhip there practiſed, was *not according* to the Liturgy and Practice of the Church of *England*;

ſo that the Informers muſt be preſent the whole time of the Meeting: for if they only hear a man Praying or Preaching, that is not contrary to the Practice of the Church of *England*, and how does it appear that they did not read the Liturgy? 3. It muſt be proved that there were aſſembled five perſons or more, beſides the Inhabitants in the houſe.

4. If a party be Fined above ten ſhillings, if pay down the money, or it be levied within one Week after ſuch Payment or Levy, *he may Appeal* from the Juſtice Convicting, to the next Quarter-Seſſions, where he ſhall have a Triall *by Jury* thereupon, and undoubtedly if it do not appear of the ſaid Jury that it was a *Seditious* Meeting, they ought to find for the Appealer.

5. A *General* Warrant from any Juſtice or Juſtices to Conſtables, to Inquire after, Seize, *&c.* all Conventicles in their Precincts, is not good; it ought to particularize the Houſe and Place, Houſes and places where the Conventicle is, or Conventicles are held, and then the Conſtable ought forthwith to go, and if he finds it ſo, to ſuppreſs it; but otherwiſe the Conſtable might be put to endleſs Vexation in hunting after Meetings to no purpoſe, whereas the Act enjoyns him no ſuch trouble; and if you go once and find no Conventicle, you are not obliged to go a *ſecond time* on the ſame Warrant, but ought to have a new one, nor is the Conſtable obliged to turn *Informer*.

6. As to *Breaking open* Doors, you ſee the Act directs that it may be done, firſt only in an houſe *where* 'tis Inform'd there is actually a Conventicle as aforeſaid (that is upon the *Oaths* of two Perſons.) 2. The Conſtables, *&c.* cannot do this without firſt there be a *Demand and Denial* to enter: 3. Nor then neither without a *Warrant* from the Juſtice

Juſtice to that purpoſe. If a Conſtable upon a light vain tale, without two perſons Swearing it, that there is at ſuch a Houſe a Meeting, and without Warrant ſhall venture to break open the Doors, and there be found no Conventicle, he makes himſelf liable to be Indicted for *Burglary*.

7. There is no power given to break Doors for *Levying* the Penalties, therefore let the Conſtables and Officers be wary what they do in that Caſe.

8. Conſtables would do well to know and aſſert the Dignity of their *Office*, they are not to run up and down like Lacquies after the Capricio's of every Juſtice, and ſpend the Lords day Prophanely in hunting after Meetings; if the Juſtices are upon ſufficient Oath Inform'd of a Meeting, and will make out a Warrant ſpecifying where it is, you'l goe, but to ramble about with them from this place to that, you are not obliged; no more are you to ſeize or Impriſon perſons on the verbal Command of any Juſtice, unleſs in viſible Breach of the peace; but you muſt have a Warrant, ſpecifying the perſons *Name* and *Offence*, before you can lay hold of him, or elſe you may repent it, when ſued another day for falſe Impriſonment.

9. Since by the Statute of the 29 of *Car.* 2d. *Cap.* 7. It is Enacted in theſe words: "Provided "alſo that no Perſon or Perſons upon the Lords "day ſhall ſerve or Excecute, or cauſe to be ſerved "or Executed, any Writ, Proceſs, *Warrant*, Or"der, Judgment or Decree, (except in caſes of "Treaſon, Felony, or Breach of the Peace) but "that the ſervice of every ſuch Writ, Proceſs, War"rant, *&c.* ſhall be void to all Intents and Purpo"ſes whatſoever; and the Perſon or Perſons ſo "Serving or Executing the ſame ſhall be as lia"ble to the ſuit of the party grieved, and anſwer "Damages to him for doing thereof, as if he or "they had done the ſame without any Writ, Pro-

"ceſs, Warrant, Order, Judgment, or Decree at "all.

It will concern all Conſtables and Officers to conſider with what ſafety they can execute any ſuch Warrants at all on the Lords day, on peaceable Meetings, it being evident that every man they diſturb by Colour of ſuch Warrant on that day, has by this Statute a good Action againſt them.

And ſo much for Laws againſt Diſſenters.

In the next place, according to our Promiſe, we ſhall here add an Abſtract of the Laws *againſt* Popery *and* Papiſts; *and perhaps as 'tis ſaid, where there are* moſt Laws *there are* moſt Offences, *ſo here we may ſay, though there be ſuch abundance of Acts, of ſuch ſevere and various Penalties, yet there are ſcarce any ſort of Criminals more* rarely *brought to Conviction or Puniſhment.*

THE ſecond Refuſal of the Oath of *Supremacy*, puniſht as *High Treaſon*, 5 *Eliz.* 1.

To maintain or Extoll Authority of the See of *Rome*, the ſecond time, *High Treaſon*, 5 *Eliz.* 1.

To obtain or put in Uſe any *Bull* from *Rome*, *High Treaſon*, 13 *Eliz.* 2.

To perſwade or *Reconcile*, *OR TO BE RE-CONCILED* to the Roman Religion, *High Treaſon*, 23 *Eliz.* 1. & 3 *Jac.* 4.

For *Jeſuite* or *Prieſt* made by Authority from the Pope, to come into, or remain in the Kings Dominions, *High Treaſon.* 27 *Eliz.* 2.

So for remaining in a Seminary ſix Months after *Procla-*

Proclamation, and afterward Returning, *High Treason*, 27 *Eliz.* 2.

For Concealing of a *Bull* or other Inſtrument from *Rome*, or reconciliation offer'd, Puniſht as *Miſpriſion of Treaſon*, 13 *Eliz.* 2.

To maintain or conceal thoſe who perſwade, or are Reconcil'd to the Roman Religion, *Miſpriſion of Treaſon*, 33 *Eliz.* 1.

To Receive, Relieve, Comfort *Jeſuite* or *Prieſt*, knowing him to be ſuch, Puniſht as *Felony*, 27 *Eliz.* 2.

To go and ſerve a Foreign Prince, having not before taken the Oath of Allegiance, and entred Bond *not to be Reconciled* to the Roman Religion, *Felony*, 3 *Jac.* 4.

The firſt Refuſal of the Oath of Supremacy, is Puniſht as in Caſe of a *Premunire*, which imports a forfeiture of all Lands and Goods, Impriſonment for Life, and a Deprivement of the Benefit of Law, 5 *Eliz.* 1.

To ſet forth or defend Power Spiritual in the See of *Rome*, *Premunire*, 5 *Eliz.* 1.

To Bring or Receive any *Agnus Dei*, Croſſes, Pictures, or ſuch like from *Rome*, *Premunire*, 13 *Eliz.* 2. 23 *Eliz.* 1.

To aid any Perſon who hath put in Uſe any Bull from the See of *Rome*, *Premunire*, 13 *Eliz.* 2. 23 *Eliz.* 1.

To ſend or give Relief to any continuing in *Colledges* or *Seminaries* beyond Sea, *Premunire*, 27 *Eliz.* 2.

Refuſal of the *Oath of Allegiance* upon the ſecond Tender, *Premunire*, 3 *Jac.* 4. & 7 *Jac.* 6.

For *not diſcovering* of Preiſts made beyond the Seas, *Impriſonment*, 27 *Eliz.* 2.

Upon Indictment of Recuſancy by Proclamation, *Impriſonment*, 29 *Eliz.* 6.

Thoſe that are not able, or fail to pay their

Forfeitures, are to be Impriſoned until Payment or Conformity, 23 *Eliz.* 1.

Women Covert Impriſoned for Refuſal of the Oath of Allegiance, 3 *Jac.* 4.

For non-Payment of twelve pence for every Sunday, *Impriſonment*, 3 *Jac.* 4.

Women Covert Convicted for Recuſancy, Impriſoned till her Husband pay ten Pounds a Month, or a third part of his Lands, 7 *Jac.* 6.

Standing Excommunicated for Recuſancy, Houſe may be broken up for his Apprehenſion, 7 *Jac.* 6.

Thoſe who ſhall forbear to come to Church by the ſpace of twelve Months, bound to good Behaviour, with Surety in the *Kings-Bench*, 23 *Eliz.* 1.

Every Recuſant is Confin'd to five Miles Compaſs for Life, 23 *Eliz.* 2. To ten Miles diſtant from *London*, 3 *Jac.* 5.

Not to come into *the Houſe* where the King or his Heir Apparent is, 3 *Jac.* 5.

For abſence from Church-Service every Sunday twelve pence forfeited, 1 *Eliz.* 2.

And for every Holiday twelve pence forfeited, 3 *Jac.* 4.

For abſence from Common-prayer, every Month, *twenty Pounds* forfeited, 23 *Eliz.* 1. 3 *Jac.* 4.

For default of payment of twenty Pounds a Month, all Goods, two parts of Land and Leaſes forfeited, 29 *Eliz.* 6. & 3 *Jac.* 4.

At the Kings Election to take or refuſe twenty Pounds a Month, or to take two parts of the Recuſants Eſtates, 3 *Jac.* 4.

All Copy-hold Lands of Recuſants forfeited, 25 *Eliz.* 2.

The Forfeitures of the Anceſtor charged upon his Heir being a Recuſant, 1 *Jac.* 4.

A Recuſant forfeits for not Receiving the Sacrament according to the Service-Book, the firſt year twenty Pounds, the ſecond year forty Pounds, the

the third year and every year after ſixty Pounds, 3 *Jac.* 4.

To the Preſenter out of the Recuſants Goods forty Shillings forfeited, 3 *Jac.* 4.

For every Recuſant ſojourner and Servant, ten Pounds for every Month forfeited, 3 *Jac.* 4.

Two parts of Dower or Joynture of a Married Woman forfeited, 3 *Jac.* 5.

Coming to *Court*, an hundred Pounds forfeited, 3 *Jac.* 5.

For not Baptizing of Children according to the Service-Book publickly, within a Month after their Birth, an hundred Pound forfeited, 3 *Jac.* 5.

For Marrying otherwiſe than by a Miniſter, an hundred Pounds forfeited, 3 *Jac.* 5.

For Burying out of the Church or Church-yard, an hundred Pounds forfeited, 3 *Jac.* 5.

For ſending Children beyond Seas without Licenſe, an hundred Pounds forfeited, 1 *Jac.* 4.

For maintaining a School-maſter not going to Church, or allowed to teach, for every Month ten Pounds forfeited, 23 *Eliz.* 1. & 29 *Eliz.* 6.

And forty Shillings *per Diem* forfeited by the School-maſter and Recuſant that keeps him, 1 *Jac.* 4.

All Goods and Lands during Life, for Breach of Confinement forfeited, 23 *Eliz.* 2. & 3 *Jac.* 5.

The like forfeiture for going or ſending Children beyond the Seas to be Bred in Popery, 3 *Car.* 2.

For Reſiding within ten Miles of *London*, an hundred Pounds forfeited, 3 *Jac.* 5.

For Practiſing any Function expreſſed in the Statute of 3 *Jac.* 5. an hundred Pounds forfeited, 3 *Jac.* 5.

Diſabled to Reverſe Indictment for want of Form or other Defect, 3 *Jac.* 4.

Diſabled from the Practice of ſeveral Functions, whereby to gain their Livings, *viz.* from practiſing

Com-

Common Law, Civil Law, or being a Steward, *Attorney*, Solicitor or Officer in any Court; from Practising *Physick*, or being Apothecary, and from Bearing any Office in Camp, Troop or Band of Soldiers, or in any Ship, Castle or Fortress, *&c.* 3 *Jac.* 5.

By the Wifes Recusancy, the Husband Disabled from Publick Office or Charge in the Common-Wealth, 3 *Jac.* 5.

By Marrying otherwise than the Church of *England* alloweth, the Husband disabled to be *Tenant by Courtesie*, the Wife disabled to have *Dower*, *Jointure*, *Free Banks*, or any part or *Portion* of her Husbands Goods, 3 *Jac.* 5.

Disabled to Sue or Prosecute Actions, to present to a Benefice, to be Executor, Administrator, or Guardian, 3 *Jac* 5.

Children sent beyond the Seas without License, are disabled to take Benefit of Gift, Conveyance, Descent or Devise, 1 *Jac.* 4. & 3 *Jac.* 5.

Notwithstanding these Forfeitures, Recusants are no less Subject to Ecclesiastical Sentences, 23 *Eliz.* 1. & 3 *Jac.* 45. [But Quære, How many Papists *quâ Talis*, were ever Excommunicated since the Kings happy Restauration, though many thousand Protestants have been:] Refusal to Receive the Sacrament, and take the Oaths of Supremacy and Allegiance, *Ipso facto* disables from any publick Trust, 25 *Car.* 2. ca. 2.

Peers and Members of Parliament disabled to Sit, untill taking of Oaths of Allegiance and Supremacy, and declaring against Transubstantiation and the Idolatry of *Rome*, 30 *Car.* 2. Stat. 2.

Having thus Collected together divers of the most remarkable and advantagious of our *Laws*, whereby the *Liberties* of English-men are Guarded and Secured; since the best of Laws are but insignificant

significant *Cyphers*, if not Honestly put in Execution; and since in the Execution of our Laws *JURIES* are mainly concern'd, who if *Ignorant* of their Duty, or *Corrupt*, or *Over-awed*, and not daring to make use of that just power, wherewith the Law hath invested and intrusted them, may give up all those *precious Priviledges*, and subject us to the worst kind of slavery, under pretence of Law: therefore here in the *last place*, for the Information of my honest Country-men, the *Freeholders* of *England*, and *others* who in *Corporations* are daily call'd to this important Service, I shall subjoin a brief discourse of *Juries*.

SECT. I.

Of the Advantages Englishmen enjoy by this Trial by Juries, above any other Nation under Heaven.

'TIS one of the *miserable Follies* of depraved humane Nature, that it commonly sleights present Enjoyments, and rarely rates the good things it possesses at their true value, till 'tis *deprived* of them. This grand Priviledge of *Trials per pais*, by our Countrey, that is by *JURIES*, as it seems to have been as *Ancient* as the Government or first form of *Policy* in this Island; for it was not unknown to the ancient *Brittains* (as appears by their Books and Monuments of Antiquity) Practised by the *Saxons*, [see King *Ethelreds* Laws in *Lambert*, p. 218. and *Coke* 1. part *Instit.* fo. 155.] and Confirmed since the Invasion of the *Normans* by *Magna Charta* as you have heard, and continual Usage; so it is a thing of the *highest Moment* and an essential Felicity to all English Subjects.

For

For look abroad in *France*, *Spain*, *Italy*, or indeed (almoſt) where you will, and obſerve the miſerable Condition of the Inhabitants, either intirely ſubjected to the Arbitrary *Luſts of Tyrants*, who plunder, diſmember or ſlay them, according as the humour takes them, and many times without the leaſt provocation, meerly for *ſport*, and to Gratifie a *ſavage Cruelty*: Or at beſt, you will behold them under ſuch Laws as render their *Lives*, *Liberties* and *Eſtates* liable to be diſpoſed of at the *diſcretion* of Strangers appointed their *Judges*, moſt times *mercenary*, and Creatures of Prerogative; ſometimes malicious and *oppreſſive*, and too often partial and *corrupt*. Or ſuppoſe them never ſo juſt and upright, yet ſtill has the Subject no ſecurity againſt *ſubornations*, and the attacques of malicious, falſe and unconſcionable Witneſſes; yea when there is no *ſufficient Evidence*, upon meer ſuſpicions they are obnoxious to the Tortures of the *Rack*, which often make an Innocent man Confeſs himſelf Guilty meerly to get out of preſent pain: Or if he do with invincible Courage endure the *Queſtion* (as they call thoſe Torments) he is many times ſo ſpoiled in his Limbs, as he ſcarce ever is his own man again.

Whereas ſuch has been the goodneſs of God, and the prudent care of our Anceſtors, that to our ineſtimable Happineſs, we are born and live under a mild and Righteous Conſtitution, where all theſe miſchiefs may be prevented, where none can be *Legally* condemned, either by the Power of Superior Enemies, or the *raſhneſs* or *Ill Will* of any Judge, nor by the bold Affirmations of *profligate Evidence*: For by a fundamental Law in our Government, No mans Life (unleſs it be in Parliament, which is a Supream Court, and 'tis ſuppoſed will never do any man wrong) ſhall be touched for any Crime whatſoever, but upon being found

found *Guilty* on two ſeveral *Trials* (for ſo may that of the Grand and Petty Jury be called) and the Judgment of twice Twelve men at leaſt, all of his own Condition and Neighbourhood, and upon their Oaths, [*Coke 3. part of Inſtit.* p. 40.] That is to ſay, *Twelve* or more to find the Bill of Indictment againſt him; and Twelve others to give Judgment upon the General Iſſue of *Not Guilty*: All which Jurors muſt be honeſt, ſubſtantial, Impartial men, and being Neighbours of the party accuſed, or place where the ſuppoſed Fact was committed, cannot be preſumed to be unacquainted either with the matters charged, the Priſoners courſe of Life, or the credit of the Evidence: And all theſe muſt firſt be fully ſatisfied in their Conſciences, that he is *Guilty*, and ſo unanimouſly pronounce him upon their Oaths, or elſe he cannot be condemned. For the Office and Power of theſe Juries is *Judicial:* They only are the Judges, from whoſe ſentence the Indicted are to expect *Life* or *Death*; upon their Integrity and Underſtanding, the Lives of all that are brought into Judgment do ultimately depend; From their *Verdict* their lies no *Appeal*: By finding Guilty or Not Guilty, they do complicately reſolve both Law and Fact.

Judges are made by Prerogative, and many times heretofore they have been preferred by *Corrupt Miniſters* of State, and may be ſo again in Time to come; and ſuch advanced as would ſerve a preſent Turn, not alwayes thoſe of the moſt Integrity and Skill in the Laws: Their places are ſo Honourable and Profitable, and their Tenure ſo Tickliſh, viz. *durante beneplacito*, meerly during pleaſure, that they lie under no ſmall Temptations, which perhaps with ſome may be never the leſs unlikely to prevail; for their having generally been wont before to take *Fees*, they are concern'd

cern'd in ſo many Cauſes, that they are the oftner ſubject to be tempted, and are ſo few that they may be the eaſier corrupted: They cannot be Challenged, and may be apt to think themſelves above any Action, and thence be encouraged to ſtrain a point now and then. The major part of them agreeing, is enough: they are never ſworn at each particular Trial, nor ever at all but once, and that exceeding generally: I ſay all theſe things may poſſibly ſometimes happen to Biaſs ſome Judges (for I intend not the leaſt Reflection hereby on any of thoſe *Honourable Perſons* who at preſent deſervedly ſupply our ſeats of Juſtice.) But nothing of that kind can reaſonably happen to a *Jury*. For, 1. They are return'd by a ſworn Officer. 2. Muſt be men of a clear Reputation, and competent Eſtate. 3. Being Neighbours, they may know ſomething of the buſineſs on their own knowledge. 4. Their Office is but a trouble, not accompanyed with any great Honour, nor any profit at all. 5. They are all ſolemnly ſworn to each particular Cauſe. 6. The party may challenge 35 in Caſe of Treaſon, and 20 of them in Felony, without ſhewing any cauſe, and as many more as he can aſſign cauſe againſt. 7. Of the Grand Jury Twelve at leaſt muſt joyn in the Verdict, and of the *petty Jury* every man of the Twelve muſt conſent upon his Oath, or elſe 'tis all nothing. And laſtly, if they give a corrupt Verdict between Party and Party, they are liable to an *Attaint*. [But I do not find any Attaint lies in Criminal Cauſes, where the King is a party.]

Now let any man of Sence conſider, whether this method be not more proper for *bolting* out the Truth, for finding out the *Guilty*, and preſerving the *Innocent*, than if the whole deciſion where left to the Examination of a Judge, or two or three, whoſe *Intereſt*, *Paſſion*, *Haſte*, or *Multiplicity* of buſi-

buſineſs may eaſily betray them into Error.

Deſervedly therefore is this Priviledge of Tryal by *Juries* rank'd amongſt the choiceſt of our Fundamental Laws, which whoſoever ſhall go about openly to *Suppreſs*, or craftily to *Undermine*, and render only a Formality, does *Ipſo Facto* attacque the Government, and brings in an Arbitrary Power, and is an Enemy and Traitor to his King and Countrey; For which reaſon *Engliſh Parliaments* have all along been moſt Zealous for preſerving this great Jewel of Liberty, Trials by Juries, having no leſs than 58. ſeveral times ſince the *Norman* Conqueſt been eſtabliſhed and Confirmed by the Legiſlative Power, no one Priviledge beſides having been neer ſo often remembred in Parliament.

SECT. II.

What perſons ought to be Jury-men, and how Qualified.

AS the Office of Juries is of ſuch great Importance, ſo the Wiſdom of our Law has provided that the ſame ſhall be ſupplyed with Perſons of Ability, Honeſty, Integrity and Indifferency: for (as my Lord *Cook* ſaith, 1 Part *Inſtit. Sect.* 234. fo. 155.) He that is of a Jury muſt be *Liber Homo*, that is, not only a *Free man*, and not Bond, but alſo one that hath ſuch *Freedome of mind*, as he ſtands indifferent, as he ſtands unſworn. 2. He muſt be *Legalis*, and by the Law every Juror that is returned for the Trial of any Iſſue or Cauſe, ought to have three Properties. 1. He ought to be dwelling moſt *near* to the place where the Queſtion is moved. 2. He ought to be moſt ſufficient

ſufficient both for Underſtanding and competency of Eſtate. 3. He ought to be *leaſt Suſpicious*, that is, to be indifferent as he ſtands Unſworn, and then he is accounted in Law, *Liber & Legalis homo*, otherwiſe he may be Challenged, and not ſuffered to be ſworn; but a mans being Excommunicated (as was ſaid before) is no Bar to his being a Jury-man, much leſs his being a Diſſenter or Non-frequenter of Church Ceremonies, if he be otherwiſe qualified with Eſtate and Underſtanding; for at that rate if Popery ſhould ever get uppermoſt, *No Proteſtant at all* would be capable of being a *Jury-man*, becauſe a *Nonconformiſt to Holy Church*. Now if no Statute excludes Proteſtants unconvicted of any Crime, or Diſſenters (*qua tales*) to ſerve on Juries, I ſhould think we ought to wait at leaſt till an Act of Parliament be made to that purpoſe, before we deny them *Liberam Legem*; and to Act otherwiſe, in my ſilly Opinion ſeems not only unwarrantable, but a daring Uſurpation of Legiſlative Power: In a word, Jurors muſt be free of and from all manner of Bondage, Obligations, Affections, Relations and Prejudices; they muſt be the *Peers* or Equals of the party they are to try; they muſt be of full Age, 21 Years old or upwards, not *Outlaw'd*, never *Attainted* or Convicted of Treaſon, Felony, Falſe Verdict, Perjury, or adjudged Infamous; they were anciently *all Knights*, as we read in *Glanvil* and *Bracton*, and they muſt ſtill be perſons of worth and repute; and as they are returned by a *Sworn* Officer, the Sheriff, ſo they of the petty Jury muſt be every one ſworn every ſeveral Trial by a particular Oath, the more to remind them of their duty. Nay, it ſhould ſeem in ancient times, thô the Office and Duty were ſtill the ſame as at this day, yet their Honour and Dignity were much greater. *The Mirrour of Juſtices*, (a great part of which was Written

ten before the Conqueſt, and augmented by *Andrew Horn*, a Learned Lawyer in the time of King *Edw.* the 2*d.*) p. 209. [in the *French*, and 153 in the *Engliſh*] makes no ſcruple to call them *JUDGES*; *Judges Ordinaries ſunt Suitors*; and Dr. *Cowel* in his Interpreter, tells us, Juries were [anciently] *Aſſociates and Aſſiſtants to the Judges of the Court in a kind of Equality, whereas now a dayes they attend them in great Humility:* And cites the Cuſtomary of *Normandy*, and *Lambert*, as being of the ſame Sentiment. Nay, many Wiſe and Learned men have wondred, that ſince the Law has conferr'd ſuch ample power on Jury-men, why they ſhould have no kind of *mark of Honour* or *Diſtinction*, as liberty to Sit with their *Hats on*, from the time they are Sworn to the Delivery of their Verdict, or the like: For as the Cuſtom is now a dayes, they ſitting amongſt the Croud with their *Caps off*, as well as the worſt *Malefactors* they are to Trye, 'tis not eaſie knowing them from the reſt of the Spectators. But this *Obiter*; I deſire not to bring in Innovations, but only that Engliſh men may preſerve their ancient undoubted Priviledges, to which purpoſe it will concern all that are liable to be Summoned to ſerve on Juries, heedfully to Inform themſelves of their *Duty and Office* by Law, that ſo they may uprightly diſcharge the ſame to God and the King, and their fellow Subjects.

SECT.

SECT. III.

Of Grand Juries, their Duty, and the great Importance of their Office.

JUries are of two ſorts: 1. The *Grand Jury*, ſo called, both becauſe it conſiſts of a greater number than *Twelve*, as commonly 21, 19, 17. or the like, [but note, they can make no Verdict or Preſentment, unleſs *Twelve at leaſt of them agree*, and then what they do, is Valid, tho the reſt do not conſent;] as alſo becauſe generally they are of the greater quality, and likewiſe in reſpect of their Power, becauſe the extent of their Office is more great and general, as extending to all Offences throughout the whole County for which they ſerve. 2. The *Petty Jury* (in Caſes Criminal, called commonly the Jury *of Life and Death*) which alwaies conſiſts of Twelve men, neither more nor leſs, who muſt every Man agree, or elſe it is no Verdict.

The Oath of a Grand Jury-man, as I find it Inſerted in the Collection, Intituled The Book of Oaths, *p.* 206. *is as follows.*

"YE ſhall truly inquire and due preſentment make of all ſuch things as you are charged withall on the Kings behalf: The Kings Counſel, your own, and your Fellows, you ſhall well and truely keep, and in all other things the Truth preſent: So help you God, and by the Contents of this Book.

But

But according to modern practice, and as we find it Publiſhed in the account of the late Proceedings againſt the Right Honourable the Earl of *Shaftsbury*, ſaid to be Publiſht by his Majeſties ſpecial Command, is expreſſed ſomewhat more largely.

The Oath Adminiſtred to the Grand Jury, as follows.

"YOU ſhall diligently Inquire and true Preſentment make of all ſuch matters, Articles, and things as ſhall be given you in charge, "as of all other matters and things as ſhall come "to your knowledge touching this preſent Service; "the Kings Counſel, your Fellows and your own, "you ſhall keep ſecret; you ſhall preſent no perſon for Hatred or Malice, neither ſhall you "leave any one unpreſented for Fear, Favour or "Affection, for Luere or Gain, or any hopes thereof, but in all things you ſhall preſent the truth, "the whole Truth, and nothing but the Truth, "to the beſt of your knowledge. So help you "God.

The Office of a Grand Jury, or *Grand Inqueſt*, (for by both thoſe Names 'tis promiſcuouſly call'd) is principally concern'd in two things, *Preſentments* and *Indictments*, the difference of which is thus: The *Firſt* is when the Jury themſelves of their *own knowledge* or Inquiry do take notice of ſome Crime, Offence or Nuſance, to the injury of the Publick, which they think fit ſhould be Puniſhed or removed; and in Order thereunto do give the Court notice thereof in Writing briefly and without Form, only the Nature of the thing, and the Perſons Name, and the Place. And this is call'd a *Preſentment*, being the matter whereon to form an Indictment, from which the Preſentment differs in

in these two respects. 1. In that is always *Originally* the Act of the Grand Jury. And, 2. That is not yet drawn up *in Form*; whereas Indictments are commonly drawn up either by the Order of the Court, or at the Instance of some Prosecutor, and are brought before, and delivered unto the Grand Jury, and the Witnesses Sworn attend them, who Examine the said Witnesses, and as they think fit, Return the Indictments indors'd either *Billa Vera*, [that is, a true Bill,] or *Ignoramus*, [*We are Ignorant*] that is, we do not find the matter, or there does not appear to us such sufficient Grounds for the Accusation, that the Persons Life and Reputation should be brought into question.

From whence it appears, that the end of their Office is likewise two-fold. 1. To inquire after, and give notice of all Crimes, Offences, Nusances, *&c.* in the County for which they Serve, which by reason of their Inhabitancy and Estates therein they are presumed to have best opportunity to discover, and to find Bills against Malefactors where there are good Grounds for the same, that so they may be brought to Trial if they are forth-coming, or may be Proceeded against to the Outlawry if they are fled for their said Offences. 2. To preserve the Innocent from the disgrace and hazards which ill men may design to bring them to, out of malice, or through subornation or other sinister ends; for so tender is the Law of the Reputation and Life of a man, that it will not suffer the one to be sullied, by the Parties holding up his hand at the Bar, and the other endanger'd by a Trial, until first the matter and Evidence against him have been scann'd, examined, and found by a Grand Jury upon their Oaths against him. Therefore you see by their Oaths, They are sworn not only to Inquire, but dili-

diligently to inquire, not to be negligent or ſlothfull, nor to take things upon truſt, or hurry them over careleſly, but to weigh the Circumſtances, and ſift the Witneſſes, and ſearch out the Truth of ſuch Informations as come before them, and to reject the Indictment if it be not ſufficiently proved; and if they have reaſonable Suſpicion of Malice, Subornation or wicked Deſigns againſt any mans Life or Eſtate, in ſuch as offer or come to Swear to the Bill of Indictment, they are bound by Law as well as in Conſcience to uſe all diligence to diſcover the Villany; and if it appear to them (whereof they are the Legal Judges) to be a Conſpiracy or malicious Conſpiracy againſt the Accuſed, they are bound not only to reject ſuch Bill of Indictment, but forthwith to Indict all the Conſpirators with their Aſſociates and Abettors: And that this is a main part of the Grand Juries Office, appears not only from Legal reaſon, but by an expreſs Statute, *viz.* 25 *Edw.* 3. 4. and 42 *Edw.* 3. 3. which ſayes, *That for preventing Miſchiefs done by* FALSE ACCUSERS, *none ſhould be put to anſwer, unleſs it be by Indictment or Preſentment of good and lawful People of the ſame Neighbourhood where ſuch deeds be done*; that is to ſay, by a grand Jury.

The Grounds upon which Grand Juries are to proceed in giving their Verdicts, are either,

1. From their *own knowledge*, and ſo they may find an Indictment againſt a perſon thô there be *never a Witneſs at all* to it, and a Petty Jury may in like Manner find a perſon *Guilty* of a Felony or Murder whereof he ſtands indicted, thô *no Witneſſes* appear againſt him to prove it; and the reaſon thereof is, becauſe the Juries being alwayes of the *Vicinage*, the Law ſuppoſes they may know the matter of their own knowledge, and therefore in all ſuch Caſes when a Jury is charged with a Priſoner,

Priſoner, and after the Indictment read, Witneſſes fail to appear, the Court alwayes ſpeaks thus to the Jury: *Gentlemen, here is* A. B. *ſtands Indicted of ſuch a Crime, but here's no Witneſſes come againſt him, ſo that unleſs on your own knowledge you know him Guilty, you muſt Acquit him*; and certainly if the Juries knowledge of a mans *Guilt*, is enough to *Condemn* him, I ſee not why their perſonal knowledge of a Priſoners *Innocency*, or of the Witneſſes Swearing *falſely*, ſhould not be ſufficient to *Acquit* him.

2. The other ground upon which the Grand Juries are to Proceed, is *Teſtimony of Witneſſes*, and this is call'd *EVIDENCE*, becauſe it ought to be ſuch as may make the matter clear, manifeſt, plain and *evident* to the Jury; and of this *Evidence* the Jury are the proper and *only* Judges, therefore they ought (according to their Oath) *diligently Inquire* into the Quality, Repute, and Circumſtances of the Witneſſes, the likelyhood of what they Depoſe, and whether they do not Swear out of Malice, Subornation, Self-Intereſt, Combination, or ſome ill deſign; which to Diſcover, they will do well to Examine them apart, to note their Variations and Contradictions, to ask them ſudden queſtions, and what queſtions are pertinent, not the *Judges*, but the *Jury* only can determine; for they may know how to make uſe of them towards Diſcovery of the Truth, thô the Judge do not, and 'tis *They* are upon their Oaths, not he, 'tis *they* muſt ſatisfie their own Conſciences, the Judge has nothing to do to Intermeddle, he is bound by their Verdict: Let Witneſſes be never ſo rampantly poſitive, yet if the Jurors have good and reaſonable grounds not to believe them, they will, they muſt remain as Ignorant to the parties Crime as before: we find this expreſly aſſerted for Law in our Books, as *Stiles's* Reports,

Reports, *L.* 11. thô there be Witneſſes who prove the Bill, yet the Grand Inqueſt is not bound to find it, if they ſee cauſe to the contrary, ſo *Coke L.* 6. The Judges uſe to determine *who* ſhall be Sworn, and what ſhall be produced as Evidence to the Jury, but the Jury are to conſider what Credit or Authority the ſame is worthy of. If a Grand Jury are not Judges of Evidence, they ſignifie nothing. If (as ſome would perſwade us) becauſe People Swear deſperately, thô they do not believe them, they ſhall be bound to find the Bill, then they ſignifie nothing, and are no ſecurity to preſerve Innocency. A lewd Woman once reſolv'd to Indict the then Arch-biſhop of *Canterbury* for a Rape, ſhe Swore it no doubt very heartily, according to this new Doctrine of going according to Evidence, the Jury muſt preſently have found the Bill, the Arch-biſhop muſt have been Committed to Priſon, Suſpended from Eccleſiaſtical Juriſdiction, his Goods and Chattels throughout *England* Inventoried by the Sheriffs; would it, think you, in that Caſe have been a good Excuſe for the Grand Jury, to have ſaid, that thô they believ'd in their Conſcience the Baggage ſwore falſe, yet ſhe Swearing it poſitively, they as ſo many Pariſh Clerks were but to ſay *Amen* to her Oath of the Fact, and to find *Bill a Vera* againſt that eminent Prelate? And if the Jury be Judges of the Credibility of Evidence in this Caſe, and may go contrary to it, why I pray may they not have the ſame Liberty where they find good Cauſe in others?

If an Indictment be laid againſt a man for Criminal words, ſaid to be utter'd in a Colloquium, or Diſcourſe, thô the Witneſſes roundly Swear all the expreſs words in the Indictment, yet unleſs they will Relate and ſet forth the Subſtance of the *whole talk*, 'tis impoſſible the Jury ſhould Judge

of the matter; for the *foregoing and subsequnt* words may render Expressions that are Innocent and Loyal, which taken to halfs, may be rank Treason; as if one should say, *To affirm the King has no more Right to the Crown of* England *than I have, (which is the Opinion of the Jesuits, of his Majesty, if once Excommunicated by the Pope) is detestable Treason:* And two men at some distance, not well Hearing or Remembring, or Maliciously designing against his Life, should Swear—— That he said, *The King had no more Right to the Crown than he had:* Now that the Man did utter these very word's is true, but if you ask the Evidence the rest of the Colloquium, they shall tell you there was much more Discourse, but they cannot remember it; what satisfaction is this to a Jury? or would it not be hard for a Man to be put to hold up his Hand at the Bar under the frightful Charge of Treason in this Case? Or if a Minister in his Sermon should Recite that of the *Psalms, The Fool hath said in his Heart there is no God:* Jesuited Evidence now may come and Charge him with Blasphemy, and Swear that he said, *There was no God:* and ask them what Expressions besides he used, may excuse themselves and say, 'Tis a great while agoe, we cannot remember a whole Sermon, but this we all positively Swear, *He said there was no God.*

The Inquiry of a Grand Jury should be suitable to their Title, a *Grand Inquiry*; else instead of serving their Countrey, and presenting real Crimes, they may Oppress the Innocent, as in the Case of *Samuel Wright* and *John Good*, at a Sessions in the *Old Baily*, about *December*, 1681. *Good* Indicts *Wright* for Treasonable words, and Swore the words positively; but after a Grand Enquiry, the Grand Jury found that *Wright* only spoke the words as of others, thus, *They say so and so* ——— and concluded with this——— *They*

are

are Rogues for saying it; and also *Good* at last Confessed that *Wright* was his *Master*, and Corrected him for Misdemeanors, and then to be *Reveng'd* he comes and Swears against him, which he Confessed he was Instigated to by one *Powel*; so the Grand Jury finding it to be but Malice, Return'd the Bill *Ignoramus*: whereas if they had not Examin'd him strictly, they had never discover'd the Intreigue, and the Master had Causelessly been brought to great Charge, Ignominy and Hazard.

The Judicious *Dalton*, *p.* 539 says well, *No less care or Concern at all lies on the Grand Jury, than does on the Petty Jury*: People may tell you, *That you ought to find a Bill upon any probable Evidence, for 'tis but matter of Course, a Ceremony, a Business of Form, only an Accusation, the party is to come before another Jury, and there may make his Defence*: But if this were all, to what purpose have we *Grand Juries* at all? why are the wisest, best men in a County (for such they are or should be) troubled? why are they so strictly Sworn? Do not Flatter your selves, you of the Grand Jury are as much upon your Oaths as the Petty Jury, and the Life of the man against whom the Bill is brought, is in your Hands: The Lord *Cook* 3. *Instit.* 33. plainly calls the Grand Jury-men all wilfully forsworn, and Perjured, if they wrongfully find an Indictment; and if in such a Case the other Jury thrô Ignorance, *&c.* should find the person *Guilty* too, you are Guilty of his Blood as well as they: but suppose he get off there, do you think it nothing to Accuse a man upon your Oaths, of horrid Crimes, your very doing of which puts him, thô never so Innocent, to Disgrace, Trouble, Damage, danger of Life, and makes him liable to Outlawry, Imprisonment, and every thing but Death it self, and that too for ought you know may wrongfully be occasion'd by it, your rash Verdict gaining Credit, and giving Authority to

another Jury to find him Guilty: for if the Petty Jury find a man Guilty never so unjustly, the Law suffers no Attaint or other Punishment to lie against them, for this very reason, because another Jury, *viz.* the Grand Inquest as well as they, have found him Guilty. If a Grand Jury find a Bill wrongfully against a person, and it prove never so much to his damage, he has no Remedy: for being upon their Oaths, the Law will not suppose any malice. One of the Grand Jury cannot afterwards be of the petty Jury, and why? Because, says the Law, he has once already found the party Guilty, and if he should not again, he must perjure himself. From all which it appears, what a weight and stress the Law puts upon the Verdict of a Grand Jury; and 'tis remarkable too, that the Law directs them only to say, either, *Billa vera*, *It is true*, Or, *Ignoramus*, *We know not*; and never, *That it is not true*: Which shews, That if they be doubtful, or not fully satisfied, The Indictment must be Endorsed not *Billa Vera*, We know 'tis true, but *Ignoramus*, We doubt it, We do not know it, We are not certain it be true. If they find a Bill where they ought not, they wound their own Consciences, and do an irreparable damage to the party; but where they do not find the Bill, there is no harm done to any body, for another Indictment may be brought when there is better Evidence.

SECT. IV.

That Juries are Judges of Law in some respects as well as Fact.

AMongst other devices to undermine the Rights and Power of Juries, and render them Insignificant, there has an opinion been ad-

advanced, That they are only Judges of Fact, and are not at all to Conſider the Law; ſo that if a Perſon be Indicted for a Fact which really is no Crime in it ſelf by Law, but is workt up by Words of form, as *Treaſonably*, *Seditiouſly*, *&c.* if the Fact be but proved to be done, though the ſaid wicked Circumſtances do not appear, they ſhall be ſupplied by the Law, which you are not to take notice of, but find the Bill, or bring in the Perſon Guilty, and leave the Conſideration of the Caſe in Law to the Judge, whoſe buſineſs it is.——Thus ſome people argue, but this is an apparent *Trapp*, at once to Perjure Ignorant Juries, and render them ſo far from being of good uſe, as to be only Tools of Oppreſſion, to Ruine and Murder their Innocent Neighbours with the greater Formality: For though it be true, that matter of Fact is the moſt common and proper Object of a Juries determination, and matter of Law that of the Judges, yet as Law ariſes out of, and is complicated with Fact, it cannot but fall under the Juries Conſideration. *Littleton*, *Sect.* 368. teaches us, That the Jury may at their Election either take upon them the Knowledge of the Law, and Determine both the Fact and Law themſelves, or elſe find the matter ſpecially, and leave it to the Judges: 'Tis by applying matter of Fact and Law together, and from their due Conſideration of, and right Judgment upon both, that a Jury brings forth their Verdict. Do we not ſee in moſt General Iſſues, as upon not Guilty pleaded in Treſpaſs, breach of the Peace, or Felony, though it be matter in Law, whether the party be a Treſpaſſer, a breaker of the Peace, or a Felon, yet the Jury do not find the Fact of the Caſe by it ſelf, leaving the Law to the Court, but find the party Guilty or not Guilty generally; ſo that though they Anſwer not to the Queſtion ſingly, what is Law, yet they determine the Law in all matters where Iſſue is Joined. Is it not every dayes practice,

when perſons are Indicted for Murther, the Jury does not only find them Guilty or not Guilty, but many times upon hearing and weighing of Circumſtances, brings them in either Guilty of the Murder, or elſe only of Man-ſlaughter, *per* miſadventure, or *ſe defendendo*, as they ſee Cauſe? Beſides, as Juries have ever been veſted with ſuch Power by Law, ſo to exclude them from or Diſſeize of the ſame, were utterly to Defeat the End of their Inſtitution. For then if a perſon ſhould be Indicted for doing any Common Innocent Act, if it be but Cloathed and diſguiſed in the Indictment with the name of Treaſon, or ſome other High Crime, and proved by Witneſſes to have been done by him, the Jury though ſatisfied in Conſcience, that the Fact is not any ſuch offence as 'tis called, yet becauſe (according to this fond Opinion) they have no power to Judge of Law, and the Fact charged is fully proved, they ſhould at this Rate be bound to find him Guilty: And being ſo found, the Judge may pronounce Sentence againſt him, for he finds him a Convicted Traitor, *&c.* by his Peers: and ſo Juries ſhould be made meer Properties to do the Drudgery and bear the blame of unreaſonable Proſecutions. But all this is abſurd, and abhorr'd by the Wiſdome, Juſtice and Mercy of our Laws.

In every Indictment, Information, *&c.* there are certain words of Courſe, called matter of form, as *Maliciouſly*, *Seditiouſly*, *with ſuch and ſuch an Intention*, &c. And theſe ſometimes are raiſed by a Juſt and reaſonable Implication in Law, and ſometimes are thruſt in meerly to raiſe a pretence or Colour of Crime where there is really none. So that every Jury-man ought well to underſtand this Diſtinction, where the Act or naked

naked matter of Fact charged, is in it ſelf a Crime of offence againſt Law; as killing of a Man, Levying of War againſt the King, *&c.* there the Law does in pleading require, and will ſupply thoſe words; and if the Jury do find, and are ſatisfied, That the ſubſtance of the Charge is ſuch a Crime, and the perſon Guilty therof, they are bound to find it, though no direct proof be made of thoſe Circumſtantials. But where the Act or matter of Fact is in it ſelf Innocent or Indifferent, there the purport of theſe Words (as that it was done *maliciouſly*, or with *ſuch* or *ſuch a deſign*) is neceſſary to be proved: For elſe there is no Crime, and conſequently no fit matter to be put to Trial. In which Caſe, the Grand Jury is bound in Conſcience and Law to return an *Ignoramus*, and a Petty Jury *Not Guilty*.

SECT. V.

That Juries are not finable, or any way to be puniſht under pretence of going contrary to Evidence, or againſt the Judges Directions.

MUch of what we have ſaid of Grand Juries, is alſo applicable to Petty Juries, ſo that we need not repeat it, only muſt Anſwer one Objection. Some Jury men may be apt to ſay, ——If we do not find according to Evidence, though we have reaſon to ſuſpect the truth of what they Swear, or if we do not find as the Judge directs, we may come into trouble, the Judge may Fine us, *&c.*——I Anſwer, this is a *vain fear*: No

Judge dare offer any such thing: you are the proper Judges of the matters before you, and your Souls are at stake, you ought to Act freely, and are not bound, though the Court demand it, to give the Reasons why you bring it in thus, or thus, for you of the Grand-Jury are sworn to the contrary, viz. *To keep secret your fellows Counsel and your own*; and you of the Petty Jury are no way obliged to declare your motives, it may not be convenient. 'Tis a notable Case before the Chief Justice *Anderson* in Q. *Eliz.* dayes. A Man was Arraigned for murder, the Evidence was so strong that 11. of the Jury were presently for finding him Guilty, the 12th man refused, and kept them so long that they were ready to starve, and at last made them comply with him, and bring in the Prisoner not Guilty: The Judge, who had several times admonisht this Jury-man to join with his Fellows, being surprized, sent for him, discoursed him privately; to whom upon promise of Indempnity, he at last own'd that he himself was the man that did the Murder, and the Prisoner was Innocent, and that he was resolv'd not to adde Perjury and a second Murder to the first—But to satisfie you that a Jury is no way punishable for going according to their Conscience, though against seeming Evidence, and the Reasons why they are and ought not to be question'd for the same, I shall here Recite an Adjudged Case, that of *Bushel*, in the two and twentieth year of His Majesty, Reported by the Learned Sir *John Vaughan*, whose Book is Licensed by the present Lord Chancellor, the Lord Chief Justice *North*, and all the Judges then in *England*: the said Case begins *fol.* 135. and continues 150. The whole well worth Reading: but I shall only select certain Passages.——

The Case was this.

BUshel *and others of a Jury having at a Sessions not found* Penn *and* Mead *(Two Quakers) Guilty of a Trespass, Contempt, Unlawful Assembly and Tumult, where-*

of

of they had been Indicted, were fined forty pound a man, and Committed till they should pay it. Bushel *brings his* Habeas Corpus, *and upon the Return it appeared he was Committed,—— For that contrary to Law, and against full and Clear Evidence openly given in Court, and against the Directions of the Court in matter of Law, they had Acquitted the said* W. P. *and* W. M. *to the great Obstruction of Justice,* &c. *Which upon solemn Argument was by the Judges Resolved, to be an Insufficient Cause of fining and committing them, and they were discharged, and afterwards brought Actions for their Dammage.* The Reasons of which *Judgment* are reported by Judge *Vaughan*, and amongst them he Useth these that follow, which I shall give you in his own words.

Fol. 140. *One fault in the Return is, That the Jurors are not said to have Acquitted the persons Indicted, against full and manifest Evidence,* Corruptly, and Knowing the said Evidence to be full and manifest against the Persons Indicted; *For how manifest soever the Evidence was, if it were not manifest to them, and that they Believed it such, it was not* a Finable fault, nor Deserving Imprisonment; *Upon which Difference the Law of punishing Jurors for false Verdicts, principally Depends.*

And Fol. 141. *I would know, whether any thing be more Common, than for two men, Students, Barristers, or Judges, to deduce Contrary and opposite Conclusions out of the same Case in Law? And is there any Difference that two men should Infer distinct Conclusions from the same Testimony? is any thing more known, than that the same Author and place in that Author, is forceably urg'd to maintain contrary Conclusions, and the Decision hard which is in the Right? is any thing more frequent in the controversies of Religion, than to press the same Texts for Opposite Tenets? How then comes it to pass, that two persons may not apprehend with Reason and Honesty, what a Witness, or many say, to prove in the Understanding of one plainly one thing, but in the Apprehension of the other clearly the contrary thing? must therefore one of these Me-*

rit

rit Fine and Impriſonment, *becauſe he doth that which he cannot otherwiſe do, preſerving his Oath and Integrity? And this is often the Caſe of the Judge and the Jury.*

And Fol. 142. *I conclude therefore, That this Return, charging the Priſoners to have Acquitted* P. *and* M. *againſt full and manifeſt Evidence firſt, and next without ſaying that they did* know and Believe that Evidence to be full and Manifeſt *againſt the Indicted perſons, is no* Cauſe of Fine and Impriſonment.

In the Margent of that Fol. 142. it is thus Noted: *Of this Mind were ten Judges of Eleven; the Chief Baron* Turner *gave no Opinion, becauſe not at the Argument.*

And in the ſame fol. 142. *he ſaith,* The Verdict of a Jury, and Evidence of a Witneſs, *are very* Different *things, in the Truth and Falſhood of them: a Witneſs ſwears but to what he hath* heard *or* ſeen *generally, or more largely, to what hath fallen under his Senſes: But a* Jury-man *ſwears to what he can Inferr and conclude from the Teſtimony of ſuch* Witneſſes, *by the Act and force of his* Underſtanding, *to be the Fact Inquired after; which differs nothing in Reaſon, though much in the* Puniſhment, *from what a Judge, out of Various Caſes conſider'd by him, Infers to be the Law in the queſtion before him.*

If the meaning of theſe Words, finding *againſt* the Direction of the Court, *in matter of Law, be, That if the Judge having heard the Evidence given in Court (for he knows no other) ſhall tell the* Jury *upon this Evidence, the Law is for the Plaintiff, or for the Defendant, and you are under the pain of Fine and Impriſonment to find accordingly; and the Jury ought of duty ſo to do; then every man ſees, that the Jury is but a troubleſome delay, great Charge, and no uſe in determining Right and Wrong; and therefore the Tryals by them may be better Aboliſhed than continued: which were a* ſtrange new found Concluſion, *after a* Tryal ſo Celebrated for many hundred Years.

It is true, if the Jury were to have no other Evidence for the Fact, but what is Depoſed in Court, the

Judge

Judge might know their Evidence, and the Fact from it, equally as they, and so direct what the Law were in the Case; though even then the Judge *and* Jury *might honestly differ in the Result from the Evidence, as well as two Judges may, which often happens; but the Evidence which the Jury have of the Fact, is much otherwise than that. For,*

1. *Being Returned of the Vicinage where the Cause of Action ariseth, the Law supposeth them thence to have sufficient Knowledge to Try the matter in Issue (and so they must) though no Evidence were given on either side in Court; but to this Evidence the Judge is a stranger.*

2. *They may have Evidence from their own Personal Knowledge, by which they may be assured, and sometimes are, that what is deposed in Court is absolutely false: but to this the Judge is a stranger, and he knows no more of the Fact than he hath Learned in Court, and perhaps by false Depositions, and consequently knows nothing.*

3. *The Jury may know the Witnesses to be* Stigmatized, *and* Infamous, *which may be unknown to the parties, and consequently to the Court.*

Fol. 148. *To what end is the Jury to be Returned out of the Vicinage, where the Cause of Action ariseth? to what end must Hundredors be of the Jury, whom the Law supposeth to have nearer knowledge of the Fact, than those of the Vicinage in General? to what end are they Challenged so scrupulously to the Array and Poll? to what end must they have such a certain Free-hold, and be* Probi & Legales homines, *and not of Affinity with the party concern'd? to what end must they have in many Cases the View for Exacter Information chiefly? to what end must they undergo the Punishment of the Villanous Judgment, if after all this they Implicitly must give a Verdict by the Dictates and Authority of another Man, under Pains of Fines and Imprisonment, when Sworn to do it according to the best of their own Knowledge?*

A man cannot see by anothers Eye, nor hear by anothers Ear; no more can a man conclude or Infer the thing

to

to be Resolved by anothers Understanding or Reasoning; and though the Verdict be right the Jury give, yet they being not assured that it is so from their own Understanding, are Forsworn, at least in foro Conscientiæ.

Fol. 149. *And it is Absurd to Fine a Jury for finding against their Evidence, when the Judge knows but part of it; for the better and greater part of the Evidence may be wholly unknown to him, and this may happen in most Cases, and often doth.*

Thus far Judge *Vaughan*, whose words I have faithfully Recited, and with it shall conclude this Subject; Recommending those that would be further satisfied in the Law touching the Power and Duty of Juries, to those two Excellent, Learned Treatises lately published, the one Intituled, *A Guide to English Juries*, &c. to be Sold by Mr. *Cockeril* at the Three Legs over against the *Stocks-Market*; the other, *The Security of English-mens Lives, or the Trust, Power and Duty of the Grand Juries of* England, Printed for *Benj. Alsop* in the *Poultrey*; both which are extreamly well worthy of every English mans Perusal, that is liable to be call'd to that Office.

And now I shall take Leave of the *Reader*, who I hope will join with me and all English Protestants in this Prayer:

THat Almighty God would preserve our Religion, put a stop to the Growth of Popery, Confound all their Plots, Protect our present Gracious King, Defend us both from a Forreign Yoak and Domestick Slavery, but continue to us the Enjoyment of our good old Laws, *Liberties and Priviledges, and bring all those to exemplary Justice that have or shall dare attempt to Subvert, Diminish or Undermine them.* Amen.

28 MR 59

FINIS.